FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 2541 F

DATE FILMED 4/6/89 CAMERA NO. 4

CAMERAMAN AS

89040730852

GCC#4499

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

87 OCT -5 AM 11:43

- Mon 2541

September 29, 1987

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

87 OCT -5 PM 1:23

Dear Counsel,

I, Samuel George Osborne, P.O. Box 512, Iowa Falls, Iowa 50126 file a complaint in belief that violations of the Federal election law and Federal Election Commission regulations have occurred. I believe that Mr. Bill Farley, Chairman of Farley Industries, may have violated the spirit, intent and letter of the law and its pursuant regulations in the following ways:

1- He has not included special notices or disclaimers in political advertising which he has delivered in behalf of a corporation, Farley Industries.

2- He has on Wednesday, September 23, 1987 and on other occasions aired a political commercial which advocated the rejection of the position and thus the defeat of a candidate for Federal office. Mr. Bill Farley on television WHO-TV Channel 13, Des Moines, Iowa, delivered the following statement as part of a commercial message:

"Rural America remains the very backbone of our nation's economy, which is why I care deeply that America's next president have realistic, courageous ideas that will revitalize America's agriculture. The First step is to lower interest rates. Lower rates will keep seed, feed and machinery costs down; increasing our farmer's profits and the value of their land. The second step is to expand our export markets. We can do that by keeping the dollar at competitive and realistic rate, by negotiating firmly and courageously with our trading partners, and by having the vision to develope new markets for U.S. agriculture, such as ethanol. Legislation like Mr. Gephardt`s, no matter how well intentioned, is not realistic. It will slam shut our export markets. It will hurt rural America. Confidence - no business person can have total confidence in the strength of America's economy if American agriculture is not healthy. Our nation thrives when rural America thrives. I want our presidential candidates to think about that."

I inquired of WHO-TV as to who had paid for this advertisement and was told by WHO-TV that it had been paid for by a corporation, Farley Industries.

On Friday, September 25, 1987, WHO-TV in their newscast stated that Mr. Farley was considering running for president and that he would decide within the next month or so if he would run for this Federal office. Mr. Farley has delivered a series of advertisements over the past months which have been paid for by Farley Industries. These advertisements do not discuss the quality of a product or the desirability of a service, they center in on social and political concerns of Mr. Farley. None of them have carried disclaimer statements.

In addition to my concern about fair and proper political advertisement, I am concerned about proper corporate accounting. Were these advertisements treated as business expenses by Farley Industries? If so, is it an appropriate tax exempt expenditure? Should the American people have potential tax dollars diverted to support the political beliefs of one individual, Mr. Bill Farley? Can those who authorize the expenditure of corporate resources use such resources to promote political positions which are not related to the charter and interests of all of those who hold stock in the corporation? Must the tax payer support private political positions which may differ from their own?

Were these corporate purchased political advertisements run more frequently in Iowa, the earliest State to pick presidential delegates, than they were aired in other parts of the country? If so, why?

Will Mr. Bill Farley announce his candidacy for Federal political office? If he does, are my concerns unwarranted or has the system been abused?

Sincerely,

Samuel G. Osborne

cc: U.S. Internal Revenue Service
    Representative Richard Gephardt
    United States House of Representatives,
        Sub Committee on Elections of the
        Committee on Administration
    League of Women Voters
    ACLU
    National Republican Party
    National Democratic Party
    Iowa Television Stations
    Vice President George Bush
    U.S. Senator Tom Harken
    U.S. Senator Charles Grassley
    Senator Paul Simon
    Senator Albert Gore Jr.
    Senator Robert Dole
    Representative Jack Kemp
    Representative Dave Nagel
    Governor Mike Dukakis
    Governor Bruce Babbitt
    Rev. Pat Robertson

8904073085 4

Rev. Jesse Jackson
Iowa Attorney General Tom Miller
The Des Moines Register
Iowa Television Stations
CBS 60 Minutes
NBC Today
ABC News
New York Times
The Washington Post

STATE OF IOWA)
) SS:
COUNTY OF HARDIN)

Subscribed and sworn to before me by the said Samuel G. Osborne this 29th day of September, 1987.

Patricia A. Barhite
Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA
PATRICIA A. BARHITE

pmm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

13 October 1987

Mr. Samuel George Osborne
PO Box 512
Iowa Falls, IA 50126

RE: MUR 2541

Dear Mr. Osborne:

This letter acknowledges receipt of your complaint, received on October 5, 1987, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by William Farley and Farley Industries, Inc. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 2541. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

8 9 0 4 0 7 3 0 8 5 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

13 October 1987

William F. Farley, Chairman
Farley Industries, Inc.
6300 Sears Tower
Chicago, IL 60606

RE: MUR 2541
Farley Industries, Inc.

Dear Mr. Farley:

The Federal Election Commission received a complaint which alleges that you and Farley Industries, Inc. may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2541. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Farley Industries, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public. 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 authorizing such counsel to receive any notifications and other communications from the Commission.

8 9 0 4 0 7 3 0 8 5 7

If you have any questions, please contact Maura Callaway, the staff person assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

8 9 0 4 0 7 3 0 8 5 8

GCC# 4679

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
87 NOV [illegible] 13

LORD, BISSELL & BROOK

115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 54-3707

WRITER'S DIRECT DIAL NUMBER

89040730859

October 28, 1987

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
87 NOV -2 AM 9:13

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Farley Industries, Inc.
Matter No. MUR 2541

Gentlemen:

On behalf of Farley Industries, Inc, we are answering a complaint received by the Federal Election Commission from Samuel C. Osborne alleging that certain television advertisements aired by Farley Industries, Inc. violate the Federal Election Campaigns Act and the rules and regulations promulgated thereunder.

We have reviewed the allegations and concerns raised in such complaint and after careful consideration, we believe that no action on the part of the Federal Election Commission should be taken with respect to such advertisements. Here are our reasons.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 NOV -2 AM 10:50

Initially, we note that the advertisements referred to in Mr. Osborne's complaint consist of William Farley, the Chairman of Farley Industries, Inc., presenting the view of Farley Industries, Inc. with respect to several topics of public interest. These advertisements close with a statement calling for presidential candidates in general to consider the views presented in the advertisements. In one advertisement, as stated in the complaint, there is one reference to Congressman Gephardt's trade proposals. But neither that advertisement nor any other advocates the election or defeat of anyone for any office. The advertisements do not purport to express the views of any presidential candidate. The advertisements only present the views of Farley industries, Inc. and invite presidential candidates to consider such views. We also note that Mr. Farley is not a candidate for president as that term is defined under the Act.

The First Amendment to the United States Constitution has long protected the right to express one's views with respect to political issues. This right has not been limited to only individuals, however, but has also been held to provide corporate entities with the right to express their political ideas. In fact, the First Amendment protects a corporation's right to express its views on any number of political subjects, even though the subjects addressed are not directly related to the corporation's business. First National Bank of Boston v. Bellotti 435 U.S. 765 (1978). In Bellotti, the Supreme Court held a Massachusetts statute unconstitutional because it prohibited corporations from speaking on public issues. The corporation had spoken on a referendum on the ballot. This case is similar to Farley Industries, Inc. speaking on the subject of trade legislation. Therefore, the First Amendment clearly protects the right of Farley Industries, Inc. to present its views on the political issues addressed in its advertisements.

Although the presentation of the views of Farley Industries, Inc. is undeniably protected under the First Amendment, Mr. Osborne's complaint questions whether or not the Federal Election Campaigns Act and the rules and regulations promulgated thereunder are applicable to such advertisements. We note that the Act prohibits corporations from making contributions or expenditures in connection with any presidential election. Contribution or expenditure is defined, however, to include "any direct or indirect payment... or anything of value... to any candidate, campaign committee, or political party or organization, in connection with any [presidential] election." Additionally, expenditure is elsewhere defined in the Act to only apply to actions "made for the purpose of influencing any election for Federal office." The advertisements aired by Farley Industries, Inc. do not advocate the election or defeat of any particular presidential candidate or any class of candidates. They merely present the views of Farley Industries, Inc. on certain public issues. Therefore, such advertisements do not constitute contributions or expenditures to a candidate.

Additionally, Mr. Osborne's concern is not a case of first impression. In Ash v. Cort 350 F.Supp. 227 (E.D.PA. 1972) a similar question arose. In this case, Mr. Cort, the Chairman of Bethlehem Steel Corporation, presented the views of his corporation with respect to an imminent election. No statements regarding the election or defeat of particular candidates were made, however. The court held that the actions of Mr. Cort did not constitute an expenditure, and therefore, that the Act was not violated. The case of Farley Industries, Inc. appears to be very similar to Mr. Cort's case. In fact, Mr. Cort even commented on the views of an unnamed candidate in his messages, without advocating his election or defeat, which is also what Mr. Farley has done. In light of this precedent, it would appear that the advertisements of Farley Industries, Inc. would also not constitute an expenditure.

Furthermore, we note that the regulations promulgated under the Act prohibit partisan communications by corporations. We again note, however, that the presentations of Farley Industries, Inc. solely convey the views of Farley Industries, Inc. on certain topics of public interest and urge all presidential candidates to consider such views. Therefore, the messages aired by Farley Industries, Inc. are not partisan. Nonpartisan communications are not prohibited. Therefore, the advertisements aired by Farley Industries, Inc. do not contravene the Federal Election Campaigns Act or the rules and regulations promulgated thereunder.

We also note that the rules and regulations promulgated under the Act contain certain reporting provisions that must be complied with if an independent expenditure is made. Independent expenditure is defined as an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate. One advertisement of Farley Industries, Inc. does refer to a specific presidential candidate. Such reference merely describes legislation introduced by such person and the views of Farley Industries, Inc. with respect thereto. The statements made by Farley Industries, Inc. never, however, advocate the election or defeat of the candidate referred to in the message. Therefore, the reporting requirements relating to independent expenditures do not apply to the advertisements of Farley Industries, Inc.

Mr. Osborne notes that the Farley Industries, Inc. messages do not contain the disclosures that are required under the Act. Such disclosure is only required in cases in which expenditures are made for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate. As previously noted, the advertisements of Farley Industries, Inc. do not expressly advocate the election or defeat

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of any presidential candidate, but solely present the views of Farley Industries, Inc. on a variety of topics of public interest. Additionally, as noted above, such advertisements do not constitute expenditures. Therefore, the disclosure typically required to be made on campaign messages is not required in the case of the messages aired by Farley Industries., Inc.

Finally, we note that nothing in the Act or regulations expressly authorizes the type of advertisements made by Farley Industries, Inc. We do not believe that such authorization is required, because all corporations have that right under the First Amendment. We also note that nothing in the Act or regulations prohibits the advertisements made by Farley Industries, Inc. That omission makes sense, because such a prohibition would be unconstitutional.

We trust that the foregoing response to Mr. Osborne's complaint is sufficient to indicate that no action need be taken by the Federal Election Commission with respect to the advertisements of Farley Industries, Inc. Should the Commission have any questions or comments regarding this response or the advertisements of Farley Industries, Inc., please feel free to contact the undersigned.

Very truly yours,

LORD, BISSELL & BROOK

By: Alex R. Seith

HAND DELIVERED

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
OCC#4716

87 NOV -6 AM 10: 11

FARLEY INDUSTRIES

Via Federal Express

November 5, 1987

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 NOV -6 PM 12: 12

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Farley Industries, Inc.
Matter No. MUR 2541

Gentlemen:

In reference to the above, this is to notify you that Alex R. Seith of Lord, Bissell & Brook in Chicago, is authorized to represent Farley Industries, Inc. and me personally in the above matter.

Sincerely,

Wm Farley

William Farley
Chairman

WF/jac

cc: Alex R. Seith, Lord, Bissell & Brook

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS/SUSAN GREENLEE SG.

DATE: NOVEMBER 17, 1987

SUBJECT: MUR 2541 - First General Counsel's Report signed November 10, 1987

The above-captioned matter was received in the Office of the Secretary of the Commission Friday, November 13, 1987 at 11:51 A.M. and circulated to the Commission on a 24-hour no-objection basis Monday, November 16, 1987 at 11:00 A.M.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
87 NOV 13 AM 11:51

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 2541
Date Complaint Received by OGC 10-5-87
Date of Notification to Respondent 10-13-87
Staff Member Maura White Callaway

COMPLAINANT:	Samuel Osborne
RESPONDENTS:	William Farley Farley Industries
RELEVANT STATUTE:	2 U.S.C. § 441b(a) and § 441d
INTERNAL REPORTS CHECKED:	Public Records
FEDERAL AGENCIES CHECKED:	None

I. GENERATION OF MATTER

On October 5, 1987, Samuel Osborne filed a complaint against William Farley and Farley Industries, Inc. Notification of the complaint was mailed to the respondents on October 13, 1987.

The complainant alleges that on September 23, 1987, as well as on other occasions, William Farley, Chairman of Farley Industries, Inc. aired a "political commercial" in Iowa which advocated the "rejection of the position and thus the defeat of a candidate for Federal office." According to the complainant, Mr. Farley delivered the following statement as part of a commercial message paid for by Farley Industries, Inc.:

> "Rural America remains the very backbone of our nation's economy, which is why I care

> deeply that America's next president have realistic, courageous ideas that will revitalize America's agriculture. The First [sic] step is to lower interest rates. Lower rates will keep seed, feed and machinery costs down; increasing our farmer's profits and the value of their land. The second step is to expand our export markets. We can do that by keeping the dollar at competitive and realistic rate, by negotiating firmly and courageously with our trading partners, and by having the vision to develope [sic] new markets for U.S. agriculture, such as ethanol. Legislation like Mr. Gephardt's, no matter how well intentioned, is not realistic. It will slam shut our export markets. It will hurt rural America. Confidence - no business person can have total confidence in the strength of America's economy if American agriculture is not healthy. Our nation thrives when rural America thrives. I want our presidential candidates to think about that."

The complainant further asserts that on September 25, 1987, a newscast reported that Mr. Farley was considering running for president and would make a decision in the next month. The complainant then contends that Mr. Farley "has delivered a series of advertisements over the past months which have been paid for by Farley Industries" centering on the social and political concerns of Mr. Farley, rather than the quality of a product or the desirability of a service. None of the advertisements carried disclaimer statements, according to the complainant.

On November 2, 1987, a response was submitted on behalf of Farley Industries, Inc. This Office is in the process of reviewing the response and will submit a report to the Commission containing recommendations shortly.

Lawrence M. Noble
General Counsel

11/10/87
Date

BY: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

GCC# 4850
- MUR 2541

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

87 NOV 30 PM 9:31

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7780
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

November 25, 1987

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 NOV 30 AM 10:27

Ms. Maura Callaway
Federal Election Commission
Office of General Counsel
999 East Street Northwest 6th fl.
Washington, D.C. 20463

Dear Ms. Callaway:

Yesterday, I was able to talk to Mr. William Farley to get answers to your other questions.

In particular, you referred to items in the Wall Street Journal article of November 18 saying that he was gathering petitions to run for President and that he had taken a poll.

Mr. Farley tells me emphatically that he has had no personal involvement in any petition-taking or any poll. He tells me he has not even seen any poll results.

This is particularly significant in light of your concern about whether he was in your phrase, "testing the water." As we both know, that is not a statutory phrase, but if taking a poll to determine popularity consists of what you call "testing the waters" he didn't do it. An individual could hardly be testing the waters on the basis of a poll he never saw.

What we have then, is what I have described from the beginning; a businessman who has strong views on public policy and exercised his first amendment right to express those views. He is not, however, and was not a candidate for President and didn't even look at a poll to see if he should be.

In light of the fact that Mr. Farley is not and was not a candidate for President and in light of my letters of October 28 and November 20, I hope that you are now persuaded and will be willing to recommend to the commission that the complaint be dismissed and that no action be taken.

If you have any other questions, I am as before, happy to talk to you on the phone.

Cordially,

Alex R. Seith

ARS/sg

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QCC#4871

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

87 DEC -2 AM 10:44

MUR 2541

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

November 20, 1987

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 DEC -2 AM 11:55

Ms. Maura Callaway
Federal Election Commission
Office of General Counsel
999 East Street Northwest 6th Fl.
Washington, D.C. 20463

Dear Ms. Callaway:

I am sending you this immediately after our phone call Friday, p.m. This is to confirm in writing what I told you on the phone: William Farley is not a candidate for President and will not be. He made this statement last night and was covered by the Chicago media.

In the meantime, I am going to reach him or his staff to get answers to some of the other questions you raised. You asked that I address the statements in the Wall Street Journal of November 18, 1987. I am attaching a copy as it appeared in the Chicago edition of the Journal.

It is indicative of what I said: you can't take statements from the newspapers as fact.

The opening statement says that Farley "is on the verge of telling the country he is ready to be its next President." That is not fact and he said so on Thursday. In the fifth paragraph of the article, it refers to television ads which include Mr. Farley, and calls them "campaign spots." That is the newspaper's characterization and it's false because he wasn't running for President and won't be running for President so there was no campaign.

The third to the last paragraph in the article confirms something else I said. It describes Farley coming into a football locker room giving a kind of pep talk. That is the way Bill Farley runs his business and is illustrative of his business record that backs it up. Ten years ago, he bought his first company for $1.7 million with only $25,000 of his own money, and now at the age of 44, he has built it into a company worth a billion dollars.

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As I explained in my letter of October 28, he is simply exercising his constitutional right to speak on behalf of his corporation on public issues.

I do point out however, the paragraph referring to the football locker room ad again uses the phrase "campaign" when, in fact, there wasn't any.

In short, I think the whole article should be read in light of its original false premise. The writer falsely characterizes a number of things as campaign activities when, in fact, there was no campaign.

If the writer had known that Bill Farley was speaking as a corporate executive on public issues, he might have written a very different piece having, for example, a theme such as, "Here's an energetic, self-made entrepreneur, who is so concerned about the country and the world that he wants to talk about it on television."

As soon as I get information on your other questions, I will send you an answer.

Cordially,

Alex R. Seith

ARS/sg
Enc.

›s & Wright Cut Back g Functions

ʏ Journal Staff Reporter
Matthews & Wright Inc., dealer and underwriter, antially cut back the in functions of its public fi t.
wouldn't say whether the in layoffs at the bond about 100 employees. 'he primary unit of Mat roup Inc., is the subject into its activities in con ! bond issues completed ant tax deadlines in 1985 al focus of the investiga ond issues sold by the t actually warrant that

Vright Group has two s that do government securities brokerage. ight Inc. said adverse estigations being con urities and Exchange hers contributed to its also cited the sluggish market, which has ns to make cutbacks rothers Inc. to exit the

ne, a spokesman, de at all beyond the an said the firm will con on its securities sales, e activities and invest ces relating to public

d the cutbacks will cut ter of what they were ut it didn't elaborate. onths of the year, Mat oup had a net loss of red with earnings of ents a share, a year

ht said it "hopes that ll be resolved satisfac

ge Ltd.

nned for Rest st Concerns

e Ltd., a New Zealand said it will spend as on Canadian dollars

Farley May Choose To Undergo Wear Of Presidential Race

• • •

Poll Results Are Said to Spur Executive Whose Firm Owns Fruit of the Loom

By Robert Johnson
Staff Reporter of The Wall Street Journal

CHICAGO—William F. Farley, who has been building his image with advertising paid for by his mundane manufacturing empire, is on the verge of telling the country he's ready to be its next president.

The 44-year-old former encyclopedia salesman is scheduled to meet the press tomorrow night at a "Draft Farley" rally in Des Moines, Iowa. He won't say whether he'll announce his candidacy, but associates say they expect he will.

Mr. Farley whose best-known company is Fruit of the Loom Inc., the underwear maker, is said by associates to be encouraged by a recent poll he had taken in Iowa. Of the 800 people surveyed, 40% recognized his name, and 49% said they agreed with the statement, "Now is the time for a non-politician with real-world business and economic experience."

Mr. Farley built his $2 billion business empire and made himself a millionaire several times over by using borrowed money to acquire dull companies. Farley Industries Inc.'s offerings include such unglamorous items as screws and locomotive bells. Earlier this year, guests at a party at Farley's corporate headquarters were presented with Fruit of the Loom athletic socks as they departed.

Recent television ads show Mr. Farley in flashier light. They tout work-ethic values and feature closeups of the handsome Mr. Farley. The campaign spots, budgeted for at least $2.5 million, has run strategically in Iowa, Washington D.C., and a few other markets.

Mr. Farley would run as Democrat, an associate said. He hasn't held political office and is a self-described independent. He has considered running in 1990 for the U.S. Senate seat held by Democrat Paul Simon of Illinois, a candidate for the presidential nomination.

Next February's Iowa caucuses are the traditional starting gate for the nomination. Mr. Farley has collected 10,000 signatures in Iowa on petitions urging him

Ashton-Tate's Profit Rose 41% in Quarter On 18% Revenue Rise

By a Wall Street Journal Staff Reporter

TORRANCE, Calif.—Ashton-Tate said earnings for the third quarter ended Oct. 31 jumped 41% on an 18% increase in revenue.

The software maker posted net income of $11.1 million, or 44 cents a share, a record for any quarter. A year earlier, net was $7.9 million, or 32 cents a share, adjusted to reflect a 100% stock dividend paid in January. Revenue rose to $68 million, also a record for any period, from $57.7 million.

The company's 18% rise in revenue lagged behind the 54% increase reported last month by both of its major competitors, Lotus Development Corp. and Microsoft Corp. Ashton-Tate's 41% jump in earnings topped Microsoft's 3?% increase, while falling short of the jump at Lotus, where net more than doubled.

In national over-the-counter trading yesterday, Ashton-Tate's stock fell $2 to $17.50.

Ashton-Tate cited strong sales of its MultiMate word processing software line and "rapid acceptance" of its dBASE Mac, a database management software product for users of Apple Computer Inc.'s Macintosh model.

The company said it expects to bring to market in 1988 new products which it predicted will "have a significant impact on the computer industry." A spokesman said the company is planning another generation of its dBASE line, additional products for the Macintosh, and more software aimed at letting dBASE users on a personal computer access information stored on larger systems.

For the first nine months, Ashton-Tate's net rose 29% to $30.3 million, or $1.20 a share, from $19.5 million, or 82 cents a share, a year earlier. Revenue rose 55% to $191.8 million from $147.9 million.

Kimberly Clark Corp.

Midwest Express Air Unit Plans $120 Million Expansion

Midwest Express Airlines, a unit of Kimberly Clark Corp., Dallas, said it plans a $120 million, five-year expansion program that includes enlarging its fleet, adding two new routes and constructing a maintenance and hangar facility in Milwaukee.

The regional airline said the plan would increase the number of its aircraft to 17 from five and would add about 500 employees to its Milwaukee base. Midwest Express has 269 employees in Wisconsin and 40 in other states.

Beginning in March, the carrier will begin two nonstop flights a day from Milwaukee to Newark, N.J., and to Philadelphia. Midwest Express currently flies to eight cities from its Milwaukee hub.

J.R. McConnell Surrend To FBI in Banking Cas

By a Wall Street Journal Staff Rep

HOUSTON—J.R. McConnell Jr., was indicted three weeks ago in o the biggest banking-fraud cases in tory, turned himself into Federal reau of Investigation agents at Hou Intercontinental Airport yesterday.

The surrender capped at least a w of negotiations between Mr. McConn attorney and the U.S. attorney's o for the return of Mr. McConnell, was indicted in absentia Oct. 30, Attorney Henry K. Oncken said.

The indictments were handed d against Mr. McConnell and five oth following the collapse of his $280 mil real estate empire. Additional ind ments are expected to be handed d in the case, FBI officials said.

FBI officials said the 40-year-old M McConnell, accompanied by his att ney, was taken into custody after parting a flight believed to be arriv from Mexico City, where he is believ to have fled before the indictment.

Law enforcement officials said M McConnell was the "mastermind" o "sophisticated scheme" to defra banks, savings and loan associatio and others of more than $162 milli partly through the use of fraudulent b rowing practices and bogus real-esta title reports.

Mr. McConnell is expected to be a raigned today.

Dec. 1, 1987

Ms. Callaway:

Here's a copy of the letter of Nov. 20.

I'm sorry you did not receive it sooner.

Susan Gordon
Secy. to
A. R. Seith
(312)443-0356

OCC# 4873

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
Mur 2541

87 DEC -3 AM 9:17

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7780
TELEX: 543707

November 20, 1987

Ms. Maura Callaway
Federal Election Commission
Office of General Counsel
999 East Street Northwest 6th Fl.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 DEC -3 AM 10:14

Dear Ms. Callaway:

I am sending you this immediately after our phone call Friday, p.m. This is to confirm in writing what I told you on the phone: William Farley is not a candidate for President and will not be. He made this statement last night and was covered by the Chicago media.

In the meantime, I am going to reach him or his staff to get answers to some of the other questions you raised. You asked that I address the statements in the Wall Street Journal of November 18, 1987. I am attaching a copy as it appeared in the Chicago edition of the Journal.

It is indicative of what I said: you can't take statements from the newspapers as fact.

The opening statement says that Farley "is on the verge of telling the country he is ready to be its next President." That is not fact and he said so on Thursday. In the fifth paragraph of the article, it refers to television ads which include Mr. Farley, and calls them "campaign spots." That is the newspaper's characterization and it's false because he wasn't running for President and won't be running for President so there was no campaign.

The third to the last paragraph in the article confirms something else I said. It describes Farley coming into a football locker room giving a kind of pep talk. That is the way Bill Farley runs his business and is illustrative of his business record that backs it up. Ten years ago, he bought his first company for $1.7 million with only $25,000 of his own money, and now at the age of 44, he has built it into a company worth a billion dollars.

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As I explained in my letter of October 28, he is simply exercising his constitutional right to speak on behalf of his corporation on public issues.

I do point out however, the paragraph referring to the football locker room ad again uses the phrase "campaign" when, in fact, there wasn't any.

In short, I think the whole article should be read in light of its original false premise. The writer falsely characterizes a number of things as campaign activities when, in fact, there was no campaign.

If the writer had known that Bill Farley was speaking as a corporate executive on public issues, he might have written a very different piece having, for example, a theme such as, "Here's an energetic, self-made entrepreneur, who is so concerned about the country and the world that he wants to talk about it on television."

As soon as I get information on your other questions, I will send you an answer.

Cordially,

Alex R. Seith

ARS/sg
Enc.

...s & Wright ...Cut Back ...g Functions

...Journal Staff Reporter
...Matthews & Wright Inc., ...dealer and underwriter, ...ntially cut back the in... functions of its public fi-...

...ouldn't say whether the ...n layoffs at the bond ... about 100 employees. ...he primary unit of Mat-...roup Inc., is the subject ...nto its activities in con... bond issues completed ...nt tax deadlines in 1986 ...l focus of the investiga-...ond issues sold by the ... actually warrant that

...right Group has two ...s that do government ... securities brokerage. ...ght Inc. said adverse ...stigations being con-...urities and Exchange ...hers contributed to its ...also cited the sluggish ... market, which has ...ns to make cutbacks ...others Inc. to exit the

...e, a spokesman, de-...t all beyond the an-... said the firm will con-... on its securities sales, ... activities and invest-...ces relating to public

... the cutbacks will cut ...ter of what they were ...ut it didn't elaborate. ...fths of the year, Mat-...up had a net loss of ...d with earnings of ...ents a share, a year

...ght said it "hopes that ...l be resolved satisfac-...

...e Ltd.

...ned for Rest ...st Concerns

...e Ltd., a New Zealand ...aid it will spend as ...on Canadian dollars ...mplete a takeover of ...itish Columbia-based ...pany and boost its ...100% of another. ...will offer 19 dollars ...s much as 570 million ... all of the 30 million ... already held in 60%-...bia Forest Products ...d it will offer 80 dol-...or 3.2 million dollars, ... shares that it doesn't ...wned Crown Forest ...er said it proposes to ...ns from existing lines

...weren't immediately ...lanned offer for Brit-... shares. Fletcher said ...rown Forest bid are ...er approval. Crown ...ndent board commit-...ceived the proposal" ...he board early next

... Forest shares closed ...onto Stock Exchange ...5 dollars. Trading in ... was halted pending ...ey last traded at 70

Farley May Choose To Undergo Wear Of Presidential Race

• • •

Poll Results Are Said to Spur Executive Whose Firm Owns Fruit of the Loom

By ROBERT JOHNSON
Staff Reporter of THE WALL STREET JOURNAL

CHICAGO—William F. Farley, who has been building his image with advertising paid for by his mundane manufacturing empire, is on the verge of telling the country he's ready to be its next president.

The 44-year-old former encyclopedia salesman is scheduled to meet the press tomorrow night at a "Draft Farley" rally in Des Moines, Iowa. He won't say whether he'll announce his candidacy, but associates say they expect he will.

Mr. Farley whose best-known company is Fruit of the Loom Inc., the underwear maker, is said by associates to be encouraged by a recent poll he had taken in Iowa. Of the 800 people surveyed, 60% recognized his name, and 69% said they agreed with the statement, "Now is the time for a non-politician with real-world business and economic experience."

Mr. Farley built his $2 billion business empire and made himself a millionaire several times over by using borrowed money to acquire dull companies. Farley Industries Inc.'s offerings include such unglamorous items as screws and locomotive bells. Earlier this year, guests at a party at Farley's corporate headquarters were presented with Fruit of the Loom athletic socks as they departed.

Recent television ads show Mr. Farley in flashier light. They tout work-ethic values and feature closeups of the handsome Mr. Farley. The campaign spots, budgeted for at least $2.5 million, has run strategically in Iowa, Washington D.C., and a few other markets.

Mr. Farley would run as Democrat, an associate said. He hasn't held political office and is a self-described independent. He has considered running in 1990 for the U.S. Senate seat held by Democrat Paul Simon of Illinois, a candidate for the presidential nomination.

Next February's Iowa caucuses are the traditional starting gate for the nomination. Mr. Farley has collected 20,000 signatures in Iowa on petitions urging him to run, an associate said, and has collected 4,000 signatures in South Dakota, which holds a primary election in February.

The only significant campaign money spent so far in Iowa has been on the Farley Industries ads. In one ad, a blue-collar worker walks into a football locker room, where he is ignored by coaches. Mr. Farley enters, attacks the "uncaring attitude," of U.S. management and extols "feeling good about yourself and your company . . . (as) the only way to win."

In 1985, Mr. Farley more than doubled the size of his company with the $1 billion acquisition of Northwest Industries Inc. after another bidder failed to obtain financing. Farley supporters say he'll be equally adept at raising campaign funds.

Mr. Farley plans to run a "biography" ad about himself in a few days, a supporter said. Mr. Farley couldn't be reached for comment.

Sonesta Tender Offer Results

BOSTON—Sonesta International Hotels Corp. said 37,740 shares of its 5% cumulative preferred stock, par value $25, were tendered in its $17-a-share offer that expired Friday.

The hotel chain said 11,047 of the shares remain outstanding.

Ashton-Tate's Profit Rose 41% in Quarter On 18% Revenue Rise

By a WALL STREET JOURNAL Staff Reporter

TORRANCE, Calif.—Ashton-Tate said earnings for the third quarter ended Oct. 31 jumped 41% on an 18% increase in revenue.

The software maker posted net income of $11.1 million, or 46 cents a share, a record for any quarter. A year earlier, net was $7.9 million, or 27 cents a share, adjusted to reflect a 100% stock dividend paid in January. Revenue rose to $68 million, also a record for any period, from $57.7 million.

The company's 18% rise in revenue lagged behind the 34% increase reported last month by both of its major competitors, Lotus Development Corp. and Microsoft Corp. Ashton-Tate's 41% jump in earnings topped Microsoft's 30% increase, while falling short of the jump at Lotus, where net more than doubled.

In national over-the-counter trading yesterday, Ashton-Tate's stock fell $2 to $17.50.

Ashton-Tate cited strong sales of its MultiMate word processing software line and "rapid acceptance" of its dBASE Mac, a database management software product for users of Apple Computer Inc.'s Macintosh model.

The company said it expects to bring to market in 1988 new products which it predicted will "have a significant impact on the computer industry." A spokesman said the company is planning another generation of its dBASE line, additional products for the Macintosh, and more software aimed at letting dBASE users on a personal computer access information stored on larger systems.

For the first nine months, Ashton-Tate's net rose 29% to $30.3 million, or $1.20 a share, from $19.5 million, or 82 cents a share, a year earlier. Revenue rose 56% to $191.8 million from $147.9 million.

Kimberly-Clark Corp.

Midwest Express Air Unit Plans $120 Million Expansion

Midwest Express Airlines, a unit of Kimberly-Clark Corp., Dallas, said it plans a $120 million, five-year expansion program that includes enlarging its fleet, adding two new routes and constructing a maintenance and hangar facility in Milwaukee.

The regional airline said the plan would increase the number of its aircraft to 17 from five and would add about 500 employees to its Milwaukee base. Midwest Express has 280 employees in Wisconsin and 40 in other states.

Beginning in March, the carrier will begin two nonstop flights a day from Milwaukee to Newark, N.J., and to Philadelphia. Midwest Express currently flies to eight cities from its Milwaukee hub.

J.R. McConnell Surrend... To FBI in Banking Cas...

By a WALL STREET JOURNAL Staff Rep...

HOUSTON—J.R. McConnell Jr., ... was indicted three weeks ago in o... the biggest banking-fraud cases in ...tory, turned himself into Federal ...reau of Investigation agents at Hou... Intercontinental Airport yesterday.

The surrender capped at least a ... of negotiations between Mr. McConn... attorney and the U.S. attorney's of... for the return of Mr. McConnell, ... was indicted in absentia Oct. 30, ... Attorney Henry K. Oncken said.

The indictments were handed d... against Mr. McConnell and five oth... following the collapse of his $280 mil... real estate empire. Additional ind...ments are expected to be handed d... in the case, FBI officials said.

FBI officials said the 40-year-old ... McConnell, accompanied by his att...ney, was taken into custody after ...parting a flight believed to be arriv... from Mexico City, where he is believ... to have fled before the indictment.

Law enforcement officials said ... McConnell was the "mastermind" o... "sophisticated scheme" to defra... banks, savings and loan associati... and others of more than $162 milli... partly through the use of fraudulent b...rowing practices and bogus real-esta... title reports.

Mr. McConnell is expected to be a...raigned today.

...EST OF EARNINGS REPORTS

[illegible]	[illegible]	[illegible]

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 JAN 20 AM 11:21

EXECUTIVE SESSION

JAN 26 1988

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2541
William Farley; Farley)
Industries, Inc.)

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On October 5, 1987, Samuel Osborne filed a complaint against William Farley and Farley Industries, Inc. (Attachment 1). Notification of the complaint was mailed to the respondents on October 13, 1987. On November 2, 1987, a response was submitted on behalf of Farley Industries, Inc. (Attachment 2). A First General Counsel's Report containing no recommendations was circulated to the Commission on November 16, 1987.

II. **FACTUAL AND LEGAL ANALYSIS**

A. **The Facts**

The complainant alleges that on September 23, 1987, as well as on other occasions, William Farley, Chairman of Farley Industries, Inc., aired a "political commercial" in Iowa which advocated the "rejection of the position and thus the defeat of a candidate for Federal office." According to the complainant, Mr. Farley delivered the following statement as part of a commercial message paid for by Farley Industries, Inc.:

> "Rural America remains the very backbone of our nation's economy, which is why I care deeply that America's next president have realistic, courageous ideas that will revitalize America's agriculture. The First [sic] step is to lower interest rates. Lower rates will keep seed, feed and machinery costs down; increasing our farmer's profits

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> and the value of their land. The second step is to expand our export markets. We can do that by keeping the dollar at competitive and realistic rate, by negotiating firmly and courageously with our trading partners, and by having the vision to develope [sic] new markets for U.S. agriculture, such as ethanol. Legislation like Mr. Gephardt's, no matter how well intentioned, is not realistic. It will slam shut our export markets. It will hurt rural America. Confidence - no business person can have total confidence in the strength of America's economy if American agriculture is not healthy. Our nation thrives when rural America thrives. I want our presidential candidates to think about that."

The complainant further asserts that on September 25, 1987, a newscast reported that Mr. Farley was considering running for president and would make a decision in the next month. The complainant then contends that Mr. Farley "has delivered a series of advertisements over the past months which have been paid for by Farley Industries" centering on the social and political concerns of Mr. Farley, rather than the quality of a product or the desirability of a service. None of the advertisements carried disclaimer statements, according to the complainant.

The response submitted on behalf of Farley Industries, Inc. urges that no action be taken against the respondents. The response asserts that the advertisements involved herein consist of William Farley presenting the views of Farley Industries, Inc. with respect to "several topics of public interest," and that these ads "close with a statement calling for presidential candidates in general to consider the views presented in the advertisements." The response acknowledges that one of the ads, as stated in the complaint, makes reference to Congressman Gephardt's trade proposals, but argues that "neither that advertisement nor any other advocates the election or defeat of anyone for any office." The response characterizes the advertisements as a presentation of the views of Farley Industries, Inc. and an invitation to presidential candidates to consider such views.

In support of their claim that the ads are not prohibited under the Act, the respondents' response cites to First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), and argues that the "First Amendment clearly protects the rights of Farley Industries, Inc. to present its views on political issues addressed in its advertisements."[1/] The response also asserts that the instant matter is similar to Ash v. Cort, 350 F. Supp. 227 (E.D. PA 1972), and uses such precedent to buttress the claim that the ads by Farley Industries, Inc. do not constitute an

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1/ In First National Bank of Boston v. Bellotti, 435 U.S. 765, 788 (1978), the appellants did "not challenge the constitutionality of laws prohibiting or limiting corporate contributions to political candidates or committees, or other means of influencing candidate elections." Instead, the Court's decision pertained to the spending of money by national banking associations and business corporations to publicize their views opposing a referendum proposal to amend the Massachusetts Constitution to authorize the legislature to enact a graduated personal income tax. Importantly, the Court stated that "our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." Id. at 788 n.26.

"expenditure."[2/]

Addressing the prohibition on partisan communications by corporations, the response states that because the "presentations of Farley Industries, Inc. solely convey the views of Farley Industries, Inc. on certain topics of public interest and urge all presidential candidates to consider such views," the messages aired by Farley Industries, Inc. are not partisan and, hence, not prohibited. Based upon the foregoing arguments, the respondents conclude that the advertisements do not constitute "contributions" or "expenditures" and are not required to carry any disclaimer information.

As to the allegation that William Farley may be using Farley Industries, Inc. to further his presidential bid by having it pay

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2/ The respondents rely on Ash v. Cort, 350 F. Supp. 227 (E.D.Pa. 1972), affirmed, 471 F.2d. 811 (3rd Cir. 1973) where the District Court denied a preliminary injunction. In Cort v. Ash, 422 U.S. 66 (1975), the Supreme Court held that there is no private cause of action, that the complainant must pursue a remedy through the procedures set out in the Federal Election Campaign Act of 1971, and, therefore, that the District Court did not have jurisdiction to reach the issue discussed in that case. In any event, the District Court held that where a corporation pays for an advertisement communicating to the public its views as to honest campaigns, elections, and a statement made by an unnamed candidate aimed at the community of which it was a part, without advocating the election of any particular person or party, the payment for the advertisement did not constitute an "expenditure" within the statute proscribing any expenditure by a corporation in connection with a federal election. With respect to the respondents' argument, the instant matter is readily distinguishable from Ash v. Cort in that the court noted that the advertisement did "not mention by name any person currently a candidate for any local, state, or federal office," and that it did not "endorse or disparage the candidacy of any person currently seeking election to any local, state or Federal office." Id. at 229. The court also found that the advertisement and related communications (Footnote continued)

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for ads discussing his social and political concerns, the response states that "Mr. Farley is not a candidate as that term is defined under the Act." However, two recent news articles provide information suggesting that William Farley may have been testing-the-waters with respect to a 1988 presidential campaign. On November 18, 1987, the Wall Street Journal reported that William Farley "is on the verge of telling the country he's ready to be its next president," and noted that he was scheduled to meet the press on November 19, 1987, at a "Draft Farley" rally in Des Moines, Iowa, where it was expected he would announce his candidacy (Attachment 3). The news article also reported that William Farley had conducted a poll in Iowa which in part concerned recognition of his name and agreement with the statement "Now is the time for a nonpolitican with real-world business and economic experience," and that he had collected signatures in Iowa and South Dakota on petitions urging him to run. According to the news article, recent television ads touting work-ethic values and featuring closeups of William Farley, described as "campaign spots," were budgeted for at least $2.5 million and ran in Iowa, Washington, D.C. and "a few other markets." The Wall Street Journal further noted that "[t]he only

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(Footnote continued)
stated a variety of viewpoints on issues which voters faced in the upcoming elections, but "without identifying any particular candidate with any particular political view" (emphasis added). Id. Thus, the court concluded that the purpose of the advertisement was "to seek an honest campaign and election and, incidentially, to respond to an accusation leveled against the business community." Id. at 231, 232.

significant campaign money spent so far in Iowa has been on the Farley Industries ads," and describes one ad as follows: "a blue-collar worker walks into a football locker room, where he is ignored by coaches. Mr. Farley enters, attacks the 'uncaring attitude' of U.S. management and extols 'feeling good about yourself and your company... (as) the only way to win.'"

On November 22, 1987, the New York Times reported that at an extravagant ceremony in Des Moines, Iowa, on November 19, 1987, William Farley announced that he has decided against seeking the Democratic nomination for President (Attachment 4). The news article quotes William Farley as saying "I have sadly concluded that now is not the right time to make this kind of an effort." Prior to this announcement William Farley had been "bombarding Iowa's airwaves with television commercials about his rags-to-riches business career" and had "bought time in four Iowa television markets for a 10-minute biography," according to the news article.

On November 30, 1987, counsel for William Farley submitted a letter addressing certain information contained in the November 18, 1987, edition of the Wall Street Journal (Attachment 5). According to the letter, counsel states that his client told him that "he has had no personal involvement in any petition-taking or poll" and that "he has not even seen any poll results." The letter repeats the earlier assertion that William Farley is not, and was not, a candidate for President, and notes that he "didn't even look at a poll to see if he should be." This letter in turn referred to counsel's letter dated November 20, 1987, which was not received by this Office until December 2, 1987 (Attachment 6). The letter again denies that William Farley is a candidate, and states that the Wall Street Journal's characterization of the advertisements as "campaign spots" is false because William Farley "wasn't running for President and won't be running for President so there was no campaign." The response asserts that the Wall Street Journal news article "should be read in light of its original false premise. The writer falsely characterizes a number of things as campaign activities when, in fact, there was no campaign."

B. The Applicable Law

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for a corporation to make a contribution or expenditure in connection with any election for federal office, and it is unlawful for any officer or director of any corporation to consent to any contribution or expenditure by the corporation. The term "contribution or expenditure" is defined at 2 U.S.C. § 441b(b)(2) to mean any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or ogranization, in connection with any election to federal office.

As set forth at 11 C.F.R. § 100.7(b)(1)(i) funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 C.F.R. § 101.3. (ii) The exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate or for activities relevant to conducting a campaign. Examples of activities that indicate an individual has decided to become a candidate include, but are not limited to: (A) The individual uses general public political advertising to publicize his or her intention to campaign for federal office. (B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate. (C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. (D) The individual conducts activities in close proximity to the election or over a protracted period of time. (E) The individual has taken action to qualify for the ballot under State law.

C. Application of the Law to the Facts

The evidence in hand indicates that there are numerous advertisements of differing content, some of which refer to presidential candidates, placed and paid for by Farley

Industries, Inc. which are relevant to the issues involved herein. Although the complainant provided a transcript of a portion of one of the advertisements, no information has been provided by either the complainant or respondents as to the content of the remaining ads, other than the respondents' statement that the ads "solely convey the views of Farley Industries, Inc. on certain topics of public interest and urge all presidential candidates to consider such views."

This Office's review of the abbreviated transcript contained in the complaint indicates that there is reason to believe that the advertisement is "in connection with a federal election" and, therefore, constitutes a prohibited expenditure by Farley Industries, Inc.[3/] The United States Court of Appeals has held that in order for a contribution or expenditure to be regarded as being made in connection with a federal election, a nexus must be established between the alleged contribution or expenditure and the federal election in question. Miller v. AT&T, 507 F.2d 759, 764 (1974). Such a nexus exists herein in the view of this Office.

The advertisements at issue were aired in Iowa during a period of active campaigning by the presidential candidates for the 1988 election. Although one objective of the ad identified

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3/ Insofar as Farley Industries, Inc. is a for profit corporation, it does not fall within the exception from the prohibitions of 2 U.S.C. § 441b(a) carved out for non-profit corporations by the Supreme Court in FEC v. Massachusetts Citizens for Life, Inc., 107 S.Ct. 616 (1986).

by the complainant may well have been to raise public consciousness about the necessity for economic reforms affecting agriculture, the ad contains the clear message that the position of a specific presidential candidate, Richard Gephardt, on trade proposals is detrimental to rural America. The obvious intent behind the message, especially when viewed in conjunction with its timing, is to convince the viewers of the ad that they should not vote for Richard Gephardt in 1988. It is, therefore, the recommendation of this Office that the Commission find reason to believe Farley Industries, Inc. violated 2 U.S.C. § 441b(a) by making prohibited expenditures in connection with certain advertisements. Insofar as William Farley was personally involved in the advertisements at issue, it is the further recommendation of this Office that the Commission find reason to believe William Farley, Chairman, violated 2 U.S.C. § 441b(a) by consenting to such corporate expenditures.

As to the complainant's allegation that the respondents also violated 2 U.S.C. § 441d in connection with the advertisements, it is the view of this Office that it is more appropriate to pursue this matter as a violation of Section 441b(a) because under the foregoing analysis the advertisements constitute prohibited corporate expenditures. Consequently, this Office makes no recommendation with respect to a violation of 2 U.S.C. § 441d.

With respect to the allegation that William Farley may have used Farley Industries, Inc. to further a potential presidential campaign, the information in hand indicates that William Farley may in fact have been testing-the-waters. Although the responses deny that William Farley was or is a "candidate," or that he was "running for President," it is unclear whether he authorized the poll and collection of signatures on petitions reported by the Wall Street Journal.4/ Moreover, his appearance at an "extravagant ceremony" in Des Moines, Iowa, where he reportedly remarked, "I have sadly concluded that now is not the right time to make this kind of an effort," as well as recent television ads featuring him and his social and political concerns, strongly suggests that he may have been engaged in activities to determine whether he should become a presidential candidate. That the television advertisements were apparently paid for by Farley Industries, Inc. indicates that the funds of Farley Industries, Inc. were used to promote William Farley's activities.5/

4/ A review of Commission records has not revealed any committees registered with the Commission organized for the purpose of drafting William Farley.

5/ Although the advertisements at issue involved general public political advertising, which bears upon whether an individual has gone beyond "testing-the-waters," they appear to have been limited to discussion of certain social and political issues of interest to William Farley. There is no evidence that the funds expended on the advertisements were "for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." See 11 C.F.R. § 100.7(b)(1) and § 100.8(b)(1). Moreover, there is no indication whatsoever that William Farley stated in the advertisements that he was either a candidate or testing-the-waters with respect to a possible candidacy, or "publicized his ... intention to campaign for federal office." Id.

The Commission's regulations at 11 C.F.R. § 100.7(b)(1)(i) and § 100.8(b)(1)(i) specifically state that only funds permissible under the Act may be used for the purpose of determining whether an individual should become a candidate. Based upon the foregoing, it appears that the prohibited funds of Farley Industries, Inc. were used to aid William Farley in determining whether he should become a presidential candidate in 1988. It is, therefore, the recommendation of this Office that the Commission find reason to believe William Farley, Chairman, and Farley Industries, Inc. violated 11 C.F.R. § 100.8(b)(1)(i) by making disbursements in connection with William Farley's activities to determine if he should become a candidate, and reason to believe William Farley violated 11 C.F.R. § 100.7(b)(1)(i) by accepting contributions from Farley Industries, Inc. in connection with his activities to determine if he should become a candidate.[6]

III. RECOMMENDATIONS

1. Find reason to believe William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a) in connection with certain advertisements.

2. Find reason to believe William Farley, Chairman, and Farley Industries, Inc. violated 11 C.F.R. § 100.8(b)(1)(i) by making disbursements in connection with William Farley's activities to determine if he should become a candidate.

3. Find reason to believe William Farley violated 11 C.F.R. § 100.7(b)(1)(i) by accepting contributions from Farley Industries, Inc. in connection with his activities to determine if he should become a candidate.

6/ Consistent with the Commission's action in MUR 2133, this Office makes no recommendation concerning 2 U.S.C. § 441b in this regard, as Mr. Farley never became a candidate.

4. Approve the attached letter, and Interrogatories and Request For Production Of Documents.

Date 1/19/88

Lawrence M. Noble
General Counsel

Attachments
1. Complaint
2. Response-November 2, 1987
3. Wall Street Journal, November 18, 1987
4. New York Times, November 22, 1987
5. Response-November 30, 1987
6. Response-December 2, 1987
7. Letter, and Interrogatories and Request For Production Of Documents.

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /JOSHUA MCFADDEN JM

DATE: JANUARY 21, 1988

SUBJECT: OBJECTION TO MUR 2541 - General Counsel's Report
Signed January 19, 1988

The above-captioned document was circulated to the Commission on Wednesday, January 20, 1988 at 4:00 P.M.

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

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

This matter will be placed on the Executive Session agenda for January 26, 1988.

Please notify us who will represent your Division before the Commission on this matter.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN

DATE: JANUARY 21, 1988

SUBJECT: OBJECTIONS TO MUR 2541 - General Counsel's Report
Signed January 19, 1988

The above-captioned document was circulated to the Commission on Wednesday, January 20, 1988 4:00 P.M.

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

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

This matter will be placed on the Executive Session agenda for January 26, 1988.

Please notify us who will represent your Division before the Commission on this matter.

89040730889

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN JM

DATE: JANUARY 21, 1988

SUBJECT: COMMENTS TO MUR 2541 - General Counsel's Report
Signed January 19, 1988

Attached is a copy of Commissioner Thomas's vote sheet with comments regarding the above-captioned matter.

Attachment:
copy of vote sheet

89040730890

BALLOT

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: WEDNESDAY, JANUARY 20, 1988 4:00

COMMISSIONER: AIKENS, ELLIOTT, JOSEFIAK, McDONALD, McGARRY, THOMAS

RETURN TO COMMISSION SECRETARY BY FRIDAY, JANUARY 22, 1988 4:00

SUBJECT: MUR 2541 - General Counsel's Report
signed January 19, 1988

8 9 0 4 0 7 3 0 8 9 1

FEDERAL ELECTION COMMISSION RECEIVED
88 JAN 21 PM 2:32

( ) I approve the recommendation

(✓) I object to the recommendation

COMMENTS: for discussion

DATE: 1/21/88 SIGNATURE Scott E. Thomas

A DEFINITE VOTE IS REQUIRED. ALL BALLOTS MUST BE SIGNED AND DATED.

PLEASE RETURN ONLY THE BALLOT TO THE COMMISSION SECRETARY.

PLEASE RETURN BALLOT NO LATER THAN DATE AND TIME SHOWN ABOVE.

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /JOSHUA MCFADDEN

DATE: JANUARY 22, 1988

SUBJECT: OBJECTION TO MUR 2541 - General Counsel's Report Signed January 19, 1988

The above-captioned document was circulated to the Commission on Wednesday, January 20, 1988 at 4:00 P.M.

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

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

This matter will be placed on the Executive Session agenda for January 26, 1988.

Please notify us who will represent your Division before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
William Farley; Farley	)	MUR 2541
Industries, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of January 26, 1988, do hereby certify that the Commission took the following actions in MUR 2541:

1. Decided by a vote of 4-2 to find reason to believe William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a) in connection with certain advertisements.

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

2. Failed in a vote of 3-3 to pass a motion to find reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b by making disbursements in connection with William Farley's campaign.

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

(continued)

3. Failed in a vote of 3-3 to pass a motion to find reason to believe William Farley, Chairman, and Farley Industries, Inc. violated 11 C.F.R. § 100.8(b)(1)(i) by making disbursements in connection with William Farley's activities to determine if he should become a candidate.

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

4. Failed in a vote of 3-3 to pass a motion to find reason to believe that William Farley violated 2 U.S.C. § 441b(a) by accepting contributions from Farley Industries, Inc. in connection with his campaign.

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

5. Failed in a vote of 3-3 to pass a motion to find reason to believe William Farley violated 11 C.F.R. § 100.7(b)(1)(i) by accepting contributions from Farley Industries, Inc. in connection with his activities to determine if he should become a candidate.

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

(continued)

89040730894

6. <u>Decided by a vote of 6-0</u> to direct the Office of General Counsel to send an appropriate letter, and appropriate Interrogatories and Request for Production of Documents based upon the discussion on this date.

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

Attest:

Jan. 27, 1988
Date

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

89040730895

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1988

Alex Seith, Esquire
Lord, Bissell and Brook
115 South LaSalle Street
Chicago, Illinois 60603

RE: MUR 2541
William Farley; Farley
Industries, Inc.

Dear Mr. Seith:

On October 13, 1987, the Federal Election Commission notified your clients, William Farley and Farley Industries, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on January 26, 1988, found that there is reason to believe your clients violated 2 U.S.C. § 441b(a), a provision of the Act. Specifically, it appears that Farley Industries, Inc. made expenditures in connection with a federal election when it paid for certain advertisements, and that William Farley, Chairman, consented to such expenditures.

In addition, the Commission was equally divided on whether to find reason to believe Farley Industries, Inc. and William Farley, Chairman, violated 11 C.F.R. § 100.8(b)(1)(i) by making disbursements in connection with William Farley's activities to determine if he should become a candidate, and whether William Farley violated 11 C.F.R. § 100.7(b)(1)(i) by accepting contributions from Farley Industries, Inc. in connection with his activities to determine if he should become a candidate. The Commission was also equally divided on whether to find reason to believe William Farley, Chairman, and Farley Industries, Inc., violated 2 U.S.C. § 441b by making disbursements in connection with William Farley's campaign, and whether William Farley violated 2 U.S.C. § 441b(a) by accepting contributions from Farley Industries, Inc., in connection with his campaign.

Under the Act you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with answers to the enclosed questions and request for documents, within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your clients 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 the 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 the 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, the Commission will not entertain requests for pre-probable cause conciliation 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 the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain 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 matter to be made public.

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

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure
Interrogatories and Request for
Production of Documents

89040730897

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2541
	)	

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: William Farley, Chairman
Farley Industries, Inc.
6300 Sears Tower
Chicago, IL 60606

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1, 1987, to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

1. Provide a complete transcript of the advertisement reprinted in part in the complaint filed in MUR 2541.

2. Provide transcripts of all television and radio advertisements aired and/or paid for by Farley Industries, Inc.:

   a. making any reference whatsoever to any election, candidate for election, campaign issue, or using the phrase, in whole or part, "presidential candidate(s)";

   b. discussing any presidential candidate, campaign, or campaign issue in which William Farley speaks or appears; and,

   c. containing the image, voice, picture, or appearance of William Farley.

3. For each transcript provided in response to questions one and two:

   a. state the total cost of the advertisement including development, printing, and appearance;

   b. identify the medium in which it appeared;

   c. state the date of every appearance; and,

   d. state the purpose of each advertisement.

CCC# 4449

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

February 11, 1988

CERTIFIED MAIL

Mr. Thomas J. Josefiak, Chairman
Federal Election Commission
999 East Street Northwest 6th Fl.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
88 FEB 17 PM 1:30

Re: MUR 2541
William Farley; Farley Industries, Inc.

Dear Mr. Josefiak:

I received your letter of February 2, 1988 on February 8.

I assume there is an oversight. Your letter does not include the information required by §111.8(b) of the Code of Federal Regulations, which says, in part:

> "If the Commission finds reason to believe that a violation has occurred. . . the notification to respondent . . . shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action."

Such a report was not sent with your letter. Please send one immediately.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 FEB 17 PM 3:26

According to my reading of the regulations, the 15 days for me to respond will not start running until I receive that report. If you disagree with this, please let me know immediately.

In the meantime, I have contacted Farley Industries and I am gathering information. Just in case you disagree with my position on how the time to respond is counted, please consider this letter my written request for a pre-probably cause conciliation.

However, in view of the fact that the staff report has not yet been sent to me, I request that General Counsel not make any recommendation on my request for conciliation until I have received the staff report and had 15 days to address the matters in it.

Cordially,

Alex R. Seith

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6CC#6494

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 FEB 22 PM 5:04

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

February 19, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 FEB 22 PM 12:04

FEDERAL EXPRESS

Mr. Thomas J. Josefiak, chairman
Federal Election Commission
999 East Street Northwest 6th fl.
Washington, D.C. 20463

Re: MUR 2541
William Farley; Farley Industries, Inc.

Dear Mr. Josefiak:

In response to your letter of February 2, received by me on February 8, 1988, I am enclosing answers to the interrogatories.

I wish to point out that the only ads aired and paid for by Farley Industries during 1987 were strictly related to questions of business management in American manufacturing. None of these ads had the remotest connection to any campaign for any public office.

In addition, we are voluntarily enclosing copies of newspaper and magazine ads by Farley Industries, which also had nothing to do with any political campaign. These, together with the TV ads aired by the company cost in excess of $2.6 million. In contrast, the one ad mentioned in the complaint cost about $50,000.

I further point out that the one ad referred to in the complaint dated September 27, 1987 by Samuel Osborne was an ad aired and paid for by William Farley personally. It is my opinion, for all the reasons stated in my letters of October 28, November 23 and November 25, 1987 this ad would not have constituted a violation of any Federal Election law even if it had been aired and paid for by Farley Industries. However, since that ad was not aired and paid for by Farley Industries, that question is moot.

After you have reviewed the transcripts of the ads that actually were aired and paid for by Farley Industries, I trust that you will agree that these totally non-political ads in no way violate any provision of the Federal Election laws and that this matter should be dismissed with no action.

Cordially,

Alex R. Seith

Alex R. Seith

ARS/sg

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

William Farley;	)	
Farley Industries	)	MUR 2541

ANSWERS TO INTERROGATORIES

I, Alex R. Seith, as attorney for William Farley, individually and Farley Industries, Inc., hereby give you answers to the interrogatories in this matter, based on facts provided by the clients. In every instance, I will repeat your interrogatories before the answer.

1. Provide a complete transcript of the advertisement reprinted in part in the complaint filed in MUR 2541.

<u>Answer</u>: "Agriculture" Script

AGRICULTURE

<u>ANNOUNCER:</u> LADIES AND GENTLEMEN, BILL FARLEY CHAIRMAN OF FARLEY INDUSTRIES.

BILL ON CAMERA: RURAL AMERICA REMAINS THE VERY BACKBONE OF THIS NATION'S ECONOMY.

WHICH IS WHY I CARE DEEPLY THAT AMERICA'S NEXT PRESIDENT HAVE REALISTIC. . . COURAGEOUS. . . IDEAS THAT WILL REVITALIZE AMERICAN AGRICULTURE.

<u>THE FIRST STEP</u> IN REVITALIZING RURAL AMERICA IS TO <u>LOWER INTEREST RATES</u>.

LOWER RATES WILL KEEP SEED, FEED AND MACHINERY COSTS DOWN. . . <u>INCREASING</u> OUR FATHER'S PROFITS AND THE VALUE OF THEIR LAND.

<u>THE SECOND STEP</u> IN REVITALIZING RURAL AMERICA IS TO <u>EXPAND OUR EXPORT MARKETS</u>.

WE CAN DO THAT BY:

KEEPING THE DOLLAR AT A COMPETITIVE AND REALISTIC RATE.

89040730904

BY NEGOTIATING FIRMLY AND COURAGEOUSLY WITH OUR TRADING PARTNERS.

AND BY HAVING THE VISION TO DEVELOP NEW MARKETS FOR U.S. AGRICULTURE. . . SUCH AS ETHANOL.

PROPOSED LEGISLATION SUCH AS CONGRESSMAN GEPHARDT'S IS NOT REALISTIC. IT WILL ARTIFICIALLY RAISE PRICES AND SLAM SHUT OUR INTERNATIONAL MARKETS.

IT WILL HURT RURAL AMERICA.

NO BUSINESS PERSON CAN HAVE TOTAL CONFIDENCE IN THE STRENGTH OF AMERICA'S ECONOMY IF AMERICAN AGRICULTURE IS NOT HEALTHY.

OUR NATION THRIVES, WHEN RURAL AMERICA THRIVES.

I WANT OUR PRESIDENTIAL CANDIDATES TO THINK ABOUT THAT.

(FADE TO FARLEY'S SIGNATURE --- WHITE TYPE ON BLACK BACKGROUND)

2. Provide transcripts of all television and radio advertisements aired and/or paid for by Farley Industries, Inc.:

a. making any reference whatsoever to any election, candidate for election, campaign issue, or using the phrase, in whole or part, "presidential candidate(s)";

Answer: No television or radio advertisements of any kind were aired or paid for in 1987 by Farley Industries, Inc., which make reference to any of the items set forth in the question.

The ad referred to in question 1 was aired by William Farley personally and has been or will be paid for by him personally.

b. discussing any presidential candidate, campaign, or campaign issue in which William Farley speaks or appears; and

Answer: No radio or television ad of any kind was aired or paid for by Farley Industries, Inc. during 1987 which refers to any presidential candidate, campaign or campaign issue.

c. containing the image, voice, picture, or appearance of William Farley.

Answer: During 1987 three television commercials were aired and paid for by Farley Industries, Inc. which included William Farley. These are titled, "Baseball - Layers of Management"; "Diving - Quality v. Quantity" and "Football/Employee - Job Wellness."

The transcript of each is as follows:

FARLEY INDUSTRIES TELEVISION COMMERCIAL TRANSCRIPT
BASEBALL - "Layers of Management": 60 Seconds

FARLEY VO:	Just imagine playing for a team where you can't run home until endless layers of management give the OK. How long would your enthusiasm and your drive last?
CU FARLEY:	This clear case of mismanagement is a very real problem in American manufacturing. Our country can't compete when corporate bureaucracy brings the productivity and spirit of the whole team down. But we can make American manufacturing number one again.
RETURN TO BASEBALL SCENE.	
FARLEY VO:	By cutting the red tape . . . putting decision making back where it belongs . . . and letting our players on the field play to win.
CU FARLEY:	I'm Bill Farley, and at Farley Industries this is no starry-eyed game plan. It's reality. And it's working.

SILENT SUPER: FARLEY INDUSTRIES. AMERICA'S MOST EXCITING GROWTH COMPANY.

FARLEY INDUSTRIES TELEVISION COMMERCIAL TRANSCRIPT
DIVING - "Quality vs. Quantity": 60 Seconds

FARLEY VO: Just imagine being a diver for a coach who pushes you to do lots of dives as fast as you can, instead of going for that one perfect dive. Is putting quantity before quality any way to win?

CU FARLEY: Some of America's manufacturers seem to think so. And that's a big reason why our country is losing out to foreign competition. We can revitalize American Manufacturing . . . by emphasizing quality, not just quantity. We can recapture the time when "Made in the USA" meant, without question, the best in the world.

RETURN TO POOL SCENE.

FARLEY VO: Everything our nation makes must symbolize American excellence.

CU FARLEY: I'm Bill Farley, and at Farley Industries, this is no pipe dream.

It's reality. And it's working.

SILENT SUPER: FARLEY INDUSTRIES. AMERICA'S MOST EXCITING GROWTH COMPANY.

FARLEY INDUSTRIES TELEVISION COMMERCIAL TRANSCRIPT
FOOTBALL - "Employee/Job Wellness": 60 Seconds

FARLEY VO: Just imagine joining a team where the coach doesn't care about you. Where no one thinks about your working conditions, your health, your pride. How would you feel?

CU FARLEY: This uncaring attitude of management is all too common in American manufacturing today. If we want our nation to be world champions again, we need to motivate our American workers by concentrating on their health and self-respect. Then inspire them to do the best job possible.

RETURN TO LOCKER SCENE.

FARLEY VO: Because feeling good about yourself and your company is not a luxury . . . it's the only way to win.

FARLEY CU: I'm Bill Farley, and at Farley Industries this is no pie-in-the-sky philosophy.

It's reality. And it's working.

SILENT SUPER: FARLEY INDUSTRIES. AMERICA'S MOST EXCITING GROWTH COMPANY.

(Explanatory Note: We are repeating question 3 and answering separately for the ad referred to in question 1 and the ads referred to in question 2c.)

3. For each transcript provided in response to questions one and two: (the following answers relate only to the ad referred to in question 1.).

a. state the total cost of the advertisement including development, printing and appearance;

Answer: With reference to the ad referred to in question 1, the approximate total cost was $50,000.

b. identify the medium in which it appeared.

Answer: With reference to the ad referred to in question 1, this ad appeared on television stations in Davenport, Rhode Island; Des Moines, Iowa and Sioux City, Iowa.

c. state the date of every appearance; and

Answer: The ad referred to in question 1 was aired on October 3, and November 17, 18 and 19, 1987.

d. state the purpose of each advertisement.

<u>Answer</u>: The purpose of the ad in question 1 was to state Mr. Farley's views on Agriculture.

3. For each transcript provided in response to questions one and two: (the following answers relate to the ad transcripts set forth in response to question 2c.)

a. state the total cost of the advertisement including development, printing and appearance:

<u>Answer</u>: For the ads referred to in question 2c, the total cost was approximately $1,671,000.

b. identify the medium in which it appeared.

<u>Answer</u>: The ads referred to in question 2c appeared on television stations in New York City; Chicago; Washington, D.C.; Louisville, Kentucky; Charleston, South Carolina; Bowling Green, Kentucky; Cedar Rapids, Iowa; Des Moines, Iowa; Sioux City, Iowa; and Providence, Rhode Island.

c. state the date of every appearance:

<u>Answer</u>: The ads referred to in question 2c aired between April 25 and July 6, 1987 and again from September 14 through October 22, 1987.

d. state the purpose of each advertisement.

<u>Answer</u>: The purpose of the ads in question 2c was for Farley Industries through Mr. Farley to express its views on American manufacturing.

The company issues securities which are publicly traded. These ads promote the company with owners of its securities and potential buyers of its securities.

ADDENDUM

Although the Interrogatories ask only for radio and television ads, we are volunteering the text of two ads which appeared in newspapers and magazines in Washington, D.C., New York and Chicago. These two ads describe Farley Industries and its business philosophy. The total cost of these print ads was $943,000.

These print ads, like the TV ads referred to in question 2c promote the company with owners of its publicly held securities and potential buyers of such securities.

The most exciting growth company in America has an odd notion of what work should be:

Fun.

Certainly it's not a word that leaps to mind with respect to American manufacturing.

Yet, at Farley Industries, we believe that changing what is not fun in our workplaces could well be the single most important step toward revitalizing our nation's productivity.

Gloomy, outdated working conditions aren't fun.

Top-heavy, bureaucratic management isn't fun.

Churning out vast amounts of inferior products at the expense of your pride is, most assuredly, not fun.

At the root of Farley Industries' success is the firm belief that our employees deserve to enjoy their work. And that it's management's crucial responsibility to create an environment that's healthy, quality-oriented, rewarding... and yes, fun.

Because freed of the disheartening effects of mismanagement and indifference, America's workers will excel... and American manufacturing *will be number one* again.

At Farley Industries, this is no odd notion. It's reality. And it's working. And that's fun.

Bill Farley, Chairman, Farley Industries

FARLEY INDUSTRIES

America's most exciting growth company

ACME BOOT COMPANY · ANAHEIM CITRUS PRODUCTS COMPANY · DOEHLER-JARVIS COMPANY · FRUIT OF THE LOOM, INC. · MAGNUS COMPANY · SOUTHERN FASTENING SYSTEMS, INC. · TOOL & ENGINEERING COMPANY

The most exciting growth company in America does not make microchips, floppy disks or elitist ice cream.

At Farley Industries, we're the first to admit that many of our companies aren't in what most people would call "glamour industries." We make boots. Metal fasteners. Citrus peel by-products. Die castings. Underwear.

But these companies, the kind that are at the heart of established American manufacturing, have made Farley Industries one of the largest industrial companies in America.

Because the boots are from no ordinary bootmaker. They're from Acme® Boots, the largest bootmaker in the world.

The metal fasteners come from a leading supplier, Southern Fastening Systems.

The citrus peels are processed by the industry leader, Anaheim Citrus.

And the underwear is none other than Fruit of the Loom®, number one the world over.

All are a reflection of Farley Industries' philosophy that when employees are respected and cared for, when management is streamlined and attentive, and when quality is the goal of every member of the team... then American manufacturing, quite simply, *cannot be beaten*.

And that goes for metal fasteners as well as mocha fudge.

Bill Farley, Chairman, Farley Industries

FARLEY INDUSTRIES

America's most exciting growth company

ACME BOOT COMPANY
ANAHEIM CITRUS PRODUCTS COMPANY
DOEHLER-JARVIS COMPANY
FRUIT OF THE LOOM, INC.
MAGNUS COMPANY
SOUTHERN FASTENING SYSTEMS, INC.
TOOL & ENGINEERING COMPANY

82040730911

The most exciting growth company in America has an odd notion of what work should be:

Fun.

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Yet, at Farley Industries, we believe that changing what is not fun in our workplaces could well be the single most important step toward revitalizing our nation's productivity.

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Top-heavy, bureaucratic management isn't fun.

Churning out vast amounts of inferior products at the expense of your pride is, most assuredly, not fun.

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Because freed of the disheartening effects of mismanagement and indifference, America's workers will excel — and American manufacturing *will be number one* again.

At Farley Industries, this is no odd notion. It's reality. And it's working. And that's fun.

Bill Farley, Chairman, Farley Industries

FARLEY INDUSTRIES

America's most exciting growth company

ACME BOOT COMPANY
ANAHEIM CITRUS PRODUCTS COMPANY
DOEHLER-JARVIS COMPANY
FRUIT OF THE LOOM, INC.
MAGNUS COMPANY
SOUTHERN FASTENING SYSTEMS, INC.
TOOL & ENGINEERING COMPANY

82040730912

The most exciting growth company in America does not make microchips, floppy disks or elitist ice cream.

At Farley Industries, we're the first to admit that many of our companies aren't in what most people would call "glamour industries." We make boots. Metal fasteners. Citrus peel by-products. Die castings. Underwear.

But these companies, the kind that are at the heart of established American manufacturing, have made Farley Industries one of the largest industrial companies in America.

Because the boots are from no ordinary bootmaker. They're from Acme® Boots, the largest bootmaker in the world.

The metal fasteners come from a leading supplier, Southern Fastening Systems.

The citrus peels are processed by the industry leader, Anaheim Citrus.

And the underwear is none other than Fruit of the Loom, number one the world over.

All are a reflection of Farley Industries' philosophy that when employees are respected and cared for, when management is streamlined and attentive, and when quality is the goal of every member of the team . . . then American manufacturing, quite simply, *cannot be beaten.*

And that goes for metal fasteners as well as mocha fudge.

Farley, Chairman, Farley Industries

FARLEY INDUSTRIES

America's most exciting growth company

TOOL & ENGINEERING COMPANY

GCC # 9108
MUR 2541

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 APR 20 AM 9:44

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

April 14, 1988

RECEIVED
FEDERAL ELECTION COMMISSION

88 APR 20 PM 3:42

Ms. Judy Beth Greene
Federal Election Commission
999 E Street, N.W. 6th Fl.
Washington, D.C. 20463

Dear Ms. Greene:

In our telephone conversation today, you said I should write a letter if I wanted to make any of it part of the record.

I do want to state to you my strong view that this clearly is a no-action case. The only issue raised by the Commission was a question of whether the one ad referred to in the complaint was paid for by corporate funds. It was not.

As I pointed out, the remaining ads were sent to you only because your interrogatories asked for all ads where Mr. Farley appeared. These other ads are nothing but statements of Mr. Farley's business philosophy and do not have the remotest conceivable connection with any political campaign of any kind.

As I told you, Mr. Farley has built a multi-billion dollar business primarily with so-called rust-belt manufacturing companies. He strongly believes that America does not have to keep losing its manufacturing capacity to other countries. He points to the success of Farley Industries as proof that manufacturing can succeed in America. It's because of his strong belief in these business principles that his company sponsored these ads expressing his views on business.

To repeat, with this record, it seems clear to me that this case calls for no action by the Commission. My request for a pre-probable cause conciliation hearing was made to preserve my client's rights at a time when a deadline was about to expire and was made before I received the Commission's letter showing that the one and only issue was whether the one ad had been paid for by the corporation.

8 8 0 4 0 7 0 3 6 0 4

LORD, BISSELL & BROOK

Ms. Judy Beth green
April 14, 1988
Page 2

I wish to keep that request in force simply to protect my client's options. This, however, does not in any way detract from my conviction that this case calls for no action.

Cordially,

Alex R Seith /sg

Alex R. Seith

ARS/sg

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN

DATE: MAY 19, 1988

SUBJECT: COMMENTS TO MUR 2541 - General Counsel's Report
Signed May 16, 1988

Attached is a copy of Commissioner Elliott vote sheet with comments regarding the above-captioned matter.

89040730916

Attachment:
copy of vote sheet

BALLOT

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

DATE & TIME TRANSMITTED: TUESDAY, MAY 17, 1988 4:00

COMMISSIONER: AIKENS, ELLIOTT, JOSEFIAK, McDONALD, McGARRY, THOMAS

RETURN TO COMMISSION SECRETARY BY THURSDAY, MAY 19, 1988 4:00

SUBJECT: MUR 2541 - General Counsel's Report
Signed May 16, 1988

RECEIVED
FEDERAL ELECTION COMMISSION
88 MAY 17 PM 4:57

8 8 0 4 0 7 3 0 9 1 7

( ) I approve the recommendation

(X) I object to the recommendation

COMMENTS: For the record

DATE: 5-17-88 SIGNATURE LeeAnn Elliott

A DEFINITE VOTE IS REQUIRED. ALL BALLOTS MUST BE SIGNED AND DATED.

PLEASE RETURN ONLY THE BALLOT TO THE COMMISSION SECRETARY.

PLEASE RETURN BALLOT NO LATER THAN DATE AND TIME SHOWN ABOVE.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: MAY 19, 1988

SUBJECT: OBJECTION TO MUR 2541 - General Counsel`s Report Signed May 16, 1988

The above-captioned document was circulated to the Commission on Tuesday, May 17, 1988 at 4:00 P.M..

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

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

This matter will be placed on the meeting agenda for May 24, 1988.

Please notify us who will represent your Division before the Commission on this matter.

89040730918

FEDERAL ELECTION COMMISSION
RECEIVED
88 MAY 17 AM 10:19

BEFORE THE FEDERAL ELECTION COMMISSION

EXECUTIVE SESSION
SENSITIVE
MAY 24 1988

In the Matter of	)	
	)	
William Farley, Chairman; and	)	MUR 2541
Farley Industries, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 5, 1987, Samuel Osborne filed a complaint against William Farley and Farley Industries, Inc. Notification of the complaint was mailed to the respondents on October 13, 1987. A response was submitted on behalf of Farley Industries, Inc. on November 2, 1987. On January 26, 1988, the Commission found that there was reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a) in connection with certain advertisements.1/ A letter was sent to the respondents on February 2, 1988 apprising them of the Commission's findings and requesting that they submit answers to interrogatories accompanying the letter.

On February 17, 1988, the Commission received a letter from the respondents' counsel requesting a factual and legal analysis and pre-probable cause conciliation. On February 28, 1988, this

1/ At that time, the Commission also failed in 3-3 votes to pass motions to find reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b by making disbursements in connection with William Farley's campaign and failed to find reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 11 C.F.R. § 100.8(b)(1)(i) by making disbursements in connection with William Farley's activities to determine whether he should become a candidate. Additionally, the Commission failed in votes of 3-3 to pass motions to find reason to believe that William Farley violated 2 U.S.C. § 441b(a) by accepting contributions from Farley Industries, Inc. in connection with his campaign and to find reason to believe that Mr. Farley violated 11 C.F.R. § 100.7(b)(1)(i) by accepting contributions from Farley Industries, Inc. in connection with his activities to determine if he should become a candidate.

Office apprised counsel for respondents that this Office does not provide a factual and legal analysis to respondents in matters generated by external complaints. See 11 C.F.R. § 111.8(b). Respondents submitted answers to the interrogatories on February 22, 1988, and submitted a letter urging the Commission to take no action in this matter on April 20, 1988. This letter contained a request, in the alternative, for pre-probable cause conciliation.

II. LEGAL AND FACTUAL ANALYSIS

The complainant alleged that Farley Industries, Inc., and William Farley, Chairman, violated federal election laws by airing a commercial featuring William Farley which advocated the "rejection of the position and thus the defeat of a candidate (Representative Richard Gephardt) for Federal office." He further stated that the advertisements were aired in Iowa during a period of active campaigning by the presidential candidates for the 1988 election. Complainant alleged that "a representative of WHO-TV said that the ad was paid for by a corporation, Farley Industries." On the basis of the above information, and a partial transcript of an advertisement regarding economic reforms affecting agriculture and the detrimental effect of Richard Gephardt's proposals on agriculture, the Commission found reason to believe that Farley Industries, Inc. and William Farley, Chairman, violated 2 U.S.C. § 441b(a).

In response to the Commission's interrogatories, the respondents provided the Commission with the full text of the advertisement referenced in the complaint. The transcript reads:

__ANNOUNCER:__ LADIES AND GENTLEMEN, BILL FARLEY, CHAIRMAN OF FARLEY INDUSTRIES.

BILL ON CAMERA: RURAL AMERICA REMAINS THE VERY BACKBONE OF THIS NATION'S ECONOMY.

WHICH IS WHY I CARE DEEPLY THAT AMERICA'S NEXT PRESIDENT HAVE REALISTIC. . . COURAGEOUS. . . IDEAS THAT WILL REVITALIZE AMERICAN AGRICULTURE.

THE FIRST STEP IN REVITALIZING RURAL AMERICA IS TO LOWER INTEREST RATES.

LOWER RATES WILL KEEP SEED, FEED AND MACHINERY COSTS DOWN. . . INCREASING OUR FATHER'S PROFITS AND THE VALUE OF THEIR LAND.

THE SECOND STEP IN REVITALIZING RURAL AMERICA IS TO EXPAND OUR EXPORT MARKETS.

WE CAN DO THAT BY:

KEEPING THE DOLLAR AT A COMPETITIVE AND REALISTIC RATE.

BY NEGOTIATING FIRMLY AND COURAGEOUSLY WITH OUR TRADING PARTNERS.

AND BY HAVING THE VISION TO DEVELOP NEW MARKETS FOR U.S. AGRICULTURE. . . PROPOSED LEGISLATION SUCH AS CONGRESSMAN GEPHARDT'S IS NOT REALISTIC. IT WILL ARTIFICIALLY RAISE PRICES AND SLAM SHUT OUR INTERNATIONAL MARKETS.

IT WILL HURT RURAL AMERICA.

NO BUSINESS PERSON CAN HAVE TOTAL CONFIDENCE IN THE STRENGTH OF AMERICA'S ECONOMY IF AMERICAN AGRICULTURE IS NOT HEALTHY.

OUR NATION THRIVES, WHEN RURAL AMERICA THRIVES.

I WANT OUR PRESIDENTIAL CANDIDATES TO THINK ABOUT THAT.

(FADE TO FARLEY'S SIGNATURE --- WHITE TYPE ON BLACK BACKGROUND)

Although one objective of the above ad may well have been to raise public consciousness about the necessity for economic reforms affecting agriculture, the ad contains the clear message that the position of a specific presidential candidate, Richard Gephardt, on trade proposals is detrimental to rural America. The obvious intent behind the message, especially when viewed in conjunction with its timing, is to convince the viewers of the ad that they should not vote for Richard Gephardt in 1988.

However, information received in response to the interrogatories indicates that this ad was "aired by William Farley personally and has been or will be paid for by him personally." (Attachment 1 at 4, emphasis in original). Staff contacted the respondents' attorney, Alex Seith, for clarification on this point. Seith asserted that the ad company claims to be billing William Farley himself, rather than Farley Industries, Inc., for the first ad and that William Farley is going to pay that bill with his personal funds. In a letter subsequent to this telephone conversation, Seith claimed that Farley Industries, Inc. had not paid for the ad. (Attachment 1 at 11).

It should be noted that respondents did not make any claim that the corporation did not pay for this ad in the initial response to the complaint. Rather, Mr. Seith, as counsel for the respondents, stated that the advertisements, including the one which makes "reference to Congressman Gephart's trade proposals, ... only present the views of Farley Industries, Inc. and invite presidential candidates to consider such views." He consistently referred to these advertisements as "advertisements aired by Farley Industries, Inc.," and specifically stated that "[o]ne advertisement of Farley Industries, Inc. does refer to a specific presidential candidate." These statements are clearly inconsistent with Seith's more recent statement that the corporation has not paid for the ad which refers to Representative Gephardt.

The expenditures made to produce and air this ad would constitute a violation of 2 U.S.C. § 441b only if the corporation paid for or contracted for the ad, i.e., promised to pay for the ad. <u>See</u> 11 C.F.R. § 100.8(a)(2).2/ In the present matter it is unclear whether the corporation paid for or contracted for the ad.

In order to clarify who paid for and contracted for the ad in question, this Office recommends that the Commission approve the attached interrogatories and deny respondents' request for pre-probable conciliation at this time, pending completion of the investigation.

III. RECOMMENDATIONS

1. Decline at this time to enter into conciliation prior to a finding of probable cause to believe with William Farley, Chairman, and Farley Industries, Inc.

2/ The Commission's regulations at 11 C.F.R. § 100.8(a)(2) provide that:

> A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

2. Approve the attached letter and Questions and Request for Documents.

Lawrence M. Noble
General Counsel

Date 5/16/88

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Request for Conciliation
2. Letter and Interrogatories and Request for Documents

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
William Farley, Chairman; and	)	MUR 2541
Farley Industries, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of May 24, 1988, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2541:

1. Decline at this time to enter into conciliation prior to a finding or probable cause to believe with William Farley, Chairman, and Farley Industries, Inc.

2. Approve the letter and Questions and Request for Documents as recommended in the General Counsel's report dated May 16, 1988.

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

Attest:

5/24/88
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 27, 1988

Alex Seith, Esquire
Lord, Bissel & Brook
115 South LaSalle Street
Chicago, IL 60603

RE: MUR 2541
William Farley, Chairman
Farley Industries, Inc.

Dear Mr. Seith:

On February 2, 1988, you were notified that the Federal Election Commission found reason to believe that your clients, William Farley, Chairman and Farley Industries, Inc., violated 2 U.S.C. § 441b(a) with respect to certain advertisements. On February 17, 1988, and April 20, 1988, you submitted requests to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. Specifically, further information is necessary regarding the payment for the commercial referenced in the complaint in this matter. Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Attachment
Interrogatories and Request for Documents

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 2541
)
)
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Farley Industries, Inc.
William Farley, Chairman
c/o Alex Seith, Esquire
Lord, Bissel & Brook
115 South LaSalle Street
Chicago, IL 60603

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, DC 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

DEFINITIONS AND INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery requests shall refer to the time period from January 1987 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

INTERROGATORIES AND REQUEST FOR DOCUMENTS

TO: William Farley, Chairman
Farley Industries, Inc.

1. State whether Farley Industries, Inc. paid for or contracted to pay for the production and broadcasting of the advertisement reprinted in part in the complaint filed in MUR 2541. If so, please provide a copy of the contract, all invoices received, and all payments made with respect to this advertisement.

2 State whether William Farley personally paid for or contracted to pay for the production and broadcasting of the advertisement referenced in Question 1. If so, please provide a copy of the contract, all invoices received all payments made with respect to this advertisement, and any payment from Farley Industries, Inc. received as a reimbursement for this expenditure.

GCC# 9564

RECEIVED
FEDERAL ELECTION COMMISSION

88 JUN 20 AM 11:00

LORD, BISSELL & BROOK

115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7790
TELEX: 543707

ALEX R. SEITH
(312) 443-0386

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN 21 AM 10:45

June 15, 1988

Ms. Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: MUR 2541

Dear Ms. Lerner:

Your letter of May 27 reached me on June 3. As provided in your interrogatoreis and request for documents, I am responding within 15 days of receipt of your letter.

As shown by the attached answer to interrogatories, Mr. William Farley did in fact personally pay for the advertisement in question and has not been reimbursed by Farley Industries or any other source.

Based on this and all other evidence in the file, I request that the Commission make a decision of "no action."

Cordially,

Alex R. Seith

ARS/sg
Enc.

8 8 0 4 0 7 3 0 0 3 0

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

William Farley)
Farley Industries) MUR 2541

ANSWERS TO INTERROGATORIES

I, Alex R. Seith, as attorney for William Farley, individually and Farley Industries, Inc., hereby give you answers to the interrogatories in this matter, based on facts provided by the clients. In every instance, I will repeat your interrogatories before the answer.

1. State whether Farley Industries, Inc. paid for or contracted to pay for the production and broadcasting of the advertisment reprinted in part in the complaint filed in MUR 2541. If so, please provide a copy of the contract, all invoices received, and all payments made with respect to this advertisment.

Farley Industries, Inc. did not pay for or contract to pay for either the production or the broadcasting of the advertisement reprinted in part in the complaint filed in MUR 2541.

2. State whether William Farley personally paid for or contracted to pay for the production and broadcasting of the advertisement referenced in Question 1. If so, please provide a copy of the contract, all invoices received all payments made with respect to this advertisement, and any payment from Farley Industries, Inc. received as a reimbursement for this expenditure.

Mr. William Farley did personally pay for production and broadcasting of the advertisement referred to in Question 1. As supporting documentation for this, I enclose a letter dated June 13, 1988 written by Steven W. Dammers, Sr. Vice President of Grey Advertising to me, Alex Seith. The letter confirms that the TV commercial in question which they titled, "Agriculture" was contracted to be paid for by Mr. Farley and was in fact paid for by Mr. Farley. Attached to the letter is a copy of the text of the advertisement. As you can see from this text, it is in fact the advertisement referred to in Question 1. Also attached is a copy of the Grey Advertising Inc. invoice to Mr. Farley in the amount of $50,000.

Mr. Farley has not received any reimbursement for this expenditure from Farley Industries or from any other source.

GREY

June 13, 1988

Mr. Alex Seith
Lord, Bissell & Brook
115 South Lasalle
Chicago, Illinois 60603

Grey Advertising Inc
777 Third Avenue
New York, NY 10017
212 546 2000

Steven W. Dammers
Senior Vice President

Dear Mr. Seith,

This is to clarify the client and billing for several pieces of advertising created by Grey Advertising for our clients Mr. William Farley and Farley Industries.

Over the last two years, Grey Advertising has been retained to create several print and television advocacy advertisements for Mr. Farley and Farley Industries. One of these advertisements, a television commercial entitled "Agriculture" (the text of which is attached) was to be paid for personally by Mr. Farley. The cost of this commercial was $50,000. As indicated by the attached invoice from Grey Advertising, and pursuant to our oral contract with him, Mr. William Farley was billed directly and has paid for this cost out of his personal funds.

If I can provide any additional information regarding the above matter, please feel free to call.

Regards,

Steve Dammers

Steve Dammers

GREY ADVERTISING INC. TELEVISION

777 THIRD AVENUE, NEW YORK, N.Y. 10017

CHICAGO · LOS ANGELES · MONTREAL · SAN FRANCISCO · TORONTO

CLIENT: William Farley	COMML. NO.:	(SECS)	LIVE ☐ F/C/A ☐
PRODUCT: Farley Advocacy Campaign	TITLE: Agriculture		FILM ☐ FOR PROD. ☐
JOB NO.:	PROGRAM:	(NET)	TAPE ☐ AS REC. ☐
DATE: June 9	AIR DATE		WORD COUNT ____

VIDEO	AUDIO

VO: Bill Farley, Chairman of Farley Industries

Bill Farley: Rural America remains the very backbone of our nation's economy which is why I care so deeply that America's next President have realistic, courageous ideas that will revitalize American agriculture.

Super: The first step. Lower interest rates.

Bill Farley: The first step is to lower interest rates. Lower rates will keep seed, feed and machinery costs down increasing our farmer's products and the value of their land.

Super: The second step. Expand export markets.

Bill Farley: The second step is to expand our export markets. We can do that by keeping the dollar at a competitive and realistic rate. By negotiating firmly and courageously with our trading partners and by having the vision to develop new markets for U.S. agriculture such as ethenol. Legislation like Mr. Gepharts, no matter how well intentioned is not realistic. It will slam shut our export markets. It will hurt rural America.

Super: Confidence.

Bill Farley: Confidence. No business person can have total confidence in the strength of America's economy if American agriculture is not healthy.

Our nation thrives when rural America thrives. I want our Presidential candidates to think about that.

RTV 100

INVOICE

TO:

MR. WILLIAM FARLEY
233 SOUTH WACKER DRIVE
6300 SEARS TOWERS
CHICAGO, IL 60606

PLEASE REMIT TO:

GREY ADVERTISING INC.

DATE

INV. # 20039104

DESCRIPTION	AMOUNT
PRODUCTION OF :90 "AGRICULTURE" COMMERCIAL	
AMOUNT DUE	$50,000.00

GCC# 9745

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7780
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

July 5, 1988

MUR 2541

Ms. Judy Beth Greene
Attorney
Office of General Counsel
Federal Election Commission
999 E Street N.W., 6th Floor
Washington, D.C. 20463

88 JUL 11 PM 4:16

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE

Dear Ms. Greene:

Earlier today you called and asked two additional questions. In reviewing the interrogatories I do not see that these are included in the interrogatories. Nevertheless, I am providing you with the information.

You referred to the invoice from Grey Advertising to William Farley that was attached to my answer to the interrogatories and asked the date of the invoice. I checked with Grey Advertising and they tell me the date was September 30, 1987.

You also asked if there was any other invoice on that item. They tell me there was not.

Cordially,

Alex R. Seith

ARS/sd

88 JUL 11 AM 9:29

8 8 0 4 0 7 3 0 3 2 5

FEDERAL ELECTION COMMISSION
RECEIVED
SECRETARIAT

88 SEP 20 AM 10:06

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Farley Industies, Inc.) MUR 2541
William Farley, Chairman)

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to Farley Industries, Inc. and William Farley, Chairman, based on the assessment of the information presently available.

9/19/88
Date

Lawrence M. Noble
Lawrence M. Noble
General Counsel

8 9 0 4 0 7 5 0 9 3 5

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 OCT -3 PM 3:58

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

October 3, 1988

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2541

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondents of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe were mailed on October 3, 1988. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to respondents

Staff Person: Judybeth Greene

8 9 0 4 0 7 3 0 9 3 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1988

Alex R. Seith, Esquire
Lord, Bissell & Brook
115 South La Salle Street
Chicago, Illinois 60603

RE: MUR 2541
Farley Industries, Inc.
William Farley, Chairman

Dear Mr. Seith:

Based on a complaint filed with the Federal Election Commission on October 5, 1987, and information supplied by your clients, Farley Industries, Inc. and William Farley, Chairman, the Commission, on January 26, 1988, found that there was reason to believe your clients, Farley Industries and William Farley, Chairman, violated 2 U.S.C. § 441b(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 (ten 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 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.

Alex R. Seith, Esquire
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 Judybeth Greene, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

89040730939

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2541
William F. Farley, Chairman	)	
Farley Industries, Inc.	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 5, 1987, Samuel Osborne filed a complaint against William Farley and Farley Industries, Inc. He alleged that Farley Industries Inc. and William Farley, as chairman, violated federal election laws by airing a commercial featuring William Farley which advocated the "rejection of the position and thus the defeat of a candidate (Representative Richard Gephardt) for Federal office." He further stated that the advertisements were aired in Iowa during a period of active campaigning by the presidential candidates for the 1988 election and paid for by Farley Industries, Inc. He also alleged that Farley Industries paid for a series of advertisements which centered on Mr. Farley's social and political concerns. On the basis of this complaint and information provided by the respondents, the Commission, on January 26, 1988, found that there was reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a) in connection with certain advertisements and instituted an investigation into this matter.

II. ANALYSIS

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for a corporation to make a contribution or expenditure in connection with any election for federal office, and it is unlawful for any officer or director of any corporation to consent to any contribution or expenditure by the corporation. The terms "contribution" and "expenditure" are defined at 2 U.S.C. § 441b(b)(2) to mean any direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services or anything of value to any candidate, campaign committee or political party or organization in connection with any election to federal office.

The ad specifically referenced in the complaint appears to have been made in connection with a federal election. The full text of the advertisement referenced in the complaint (hereafter "the Agriculture ad") reads:

ANNOUNCER:	Ladies and gentlemen, Bill Farley, Chairman of Farley Industries
BILL ON CAMERA:	Rural America remains the very backbone of this nation's economy. Which is why I care deeply that America's next President have realistic ... courageous ... ideas that will revitalize American agriculture. The first step in revitalizing rural America is to lower interest rates. Lower rates will keep seed, feed and machinery costs down ... increasing our father's profits and the value of their land. The second step in revitalizing rural America is to expand our export markets. We can do that by: keeping the dollar at a competitive and realistic rate. By negotiating firmly and courageously with our trading partners. And by having the vision to develop new markets for U.S. agriculture ... proposed legislation such as Congressman Gephardt's is not realistic. It will artificially raise prices and slam shut our international markets. It will hurt rural America. No business person can have total confidence in the strength of America's economy if American agriculture is not healthy. Our nation thrives, when rural America thrives.

I want our presidential candidates to think about that.

(Fade to Farley's signature -- white type on black background) (emphasis added). Although one objective of the above ad may have been to raise public consciousness about the necessity for economic reforms affecting agriculture, the ad contains the clear message that the position of a specific presidential candidate, Richard Gephardt, is detrimental to rural America.

Although it appears that the above ad was made and aired "in connection with" a federal election, respondents claim that Farley Industries, Inc. neither paid for nor contracted for the production and broadcasting of this ad. In support of this claim respondents submitted a letter from Grey Advertising, Inc., dated June 13, 1988, stating that William Farley made an oral contract with Grey for the Agriculture ad. Pursuant to this contract, Grey stated that it billed William Farley directly for the $50,000 cost of the Agriculture ad and William Farley paid the bill from his personal funds. As the Agriculture ad appears to have been contracted and paid by William Farley personally, rather than by Farley Industries, Inc., there does not appear to have been any corporate expenditure for this ad. Therefore, there does not appear to be a violation of 2 U.S.C. § 441b(a).

The respondents also provided transcripts of three television commercials featuring William Farley which were aired and paid for by Farley Industries, Inc. in 1987. However, none of these ads mentioned campaigns, candidates or elections for federal office; rather they focused on management strategies in American manufacturing and end with the statement "FARLEY INDUSTRIES.

AMERICA'S MOST EXCITING GROWTH COMPANY." Respondents claim that the purpose of these ads was for "Farley Industries, through Mr. Farley to express its views on American Manufacturing" and to promote the reputation of the company with the owners and potential buyers of its stock. In contrast, respondents claim that the purpose of the ad which contained the reference to Congressman Richard Gephardt was to state "Mr. Farley's views on Agriculture."

Additionally, respondents volunteered the text of two print ads which also promote "FARLEY INDUSTRIES America's most exciting growth company." These are similar to the three television commercials which were aired and paid for by Farley Industries in that they describe Farley Industries' products and business philosophy. They make no reference to any campaign, candidate or election for federal office.

In conclusion, none of the ads other than the Agriculture ad appear to have been made in connection with federal elections. The Agriculture ad, which does appear to have been made in connection with a federal election, does not appear to have been either paid for or contracted for by Farley Industries, Inc. Accordingly, this Office recommends that the Commission find no probable cause to believe that Farley Industries, Inc. and William Farley, Chairman, violated 2 U.S.C. § 441b(a).

III. **GENERAL COUNSEL'S RECOMMENDATION**

Find no probable cause to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a).

9/30/88
Date

Lawrence M. Noble
General Counsel

OGC#676

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 OCT 16 AM 8:47

LORD, BISSELL & BROOK
115 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603
(312) 443-0700
CABLE: LOWIRCO CGO
TELEX: 25-3070

LOS ANGELES OFFICE
3250 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010
(213) 487-7064
TELEX: 18-1135

ATLANTA OFFICE
THE EQUITABLE BUILDING
100 PEACHTREE STREET, SUITE 2640
ATLANTA, GEORGIA 30303
(404) 521-7780
TELEX: 543707

ALEX R. SEITH
(312) 443-0356

October 12, 1988

Ms. Marjorie Emmons
Secretary of Federal Election
Commission
999 E Street N.W. 9th Fl.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF ...

88 OCT 17 AM 10:37

Dear Ms. Emmons:

I am enclosing my brief on behalf of William Farley and Farley Industries, Inc. together with the 10 copies requested by the office of the General Counsel in the matter involving their names with Case #MUR 2541.

Cordially,

Alex R. Seith

Alex R. Seith

ARS/sg
Encs.

cc: Ms. Judybeth Greene ✓

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2541
William Farley, Chairman	)	
Farley Industries, Inc.	)	

BRIEF OF BEHALF OF FARLEY INDUSTRIES

We concur with the General Counsel's conclusion that there is no probable cause to believe that William Farley or Farley Industries violated 2 U.S.C. S 441b(a).

We also agree generally with the statement of facts and reasoning in the General Counsel's Brief with two exceptions.

The General Counsel concludes that the ad referred to in the complaint "appears to have been made in connection with a Federal election." We disagree. The ad was as I stated in briefs to the General Counsel, merely an expression of Mr. Farley's views on one aspect of agriculture and international trade. As Chairman of a billion dollar corporation, he feels strongly that protectionism is a bad policy. Hence, his reference to Congressman Gephardt and his suggestion that presidential candidates think more about the issue.

In making these statements, Mr. Farley was simply using his first amendment rights. In the First National Bank of Boston v. Bellotti 435 U.S. 765 (1978), the U.S. Supreme Court confirmed that corporations as well as individuals have first amendment rights. In the case of the ad in question, Mr. Farley, not the corporation was the one expressing views. The fact that Mr. Farley expressed his views at a time when several people were running for president does not make his views part of a political campaign. If that were the case, corporations would be effectively denied their first amendment rights for two years out of every four.

We suggest that the Federal Election law should not be construed in a way that denies corporations their first amendment rights to expound on public issues. Such a construction of the statute would make the statute unconstitutional under the Bellotti case. In order to preserve the constitutionality of the statute, we suggest that a rational distinction be made between a corporation advocating the election or defeat of a particular candidate, which was not done by Mr. Farley or Farley Industries. Or, on the other hand, a corporation simply expressing its views on subjects which candidates have to deal with in their campaigns or in public offices, if they are elected.

Since the ad in this case was aired and paid for by Mr. Farley personally, and not by a corporation, that distinction is not important in this case. Nevertheless, we raise the issue out of concern that a bad precedent would be set if Mr. Farley's adverisement were held to be "in connection with" an election.

The other point of concern is that the statement on page 3 of the General Counsel's Brief that the agriculture ad "appears to have been connected and paid for by William Farley personally." It's not a matter of mere appearance. The ad was in fact paid for by Mr. Farley by personal check. Grey Advertising, Inc., the advertising agency which prepared the ad stated in a letter provided to the General Counsel that in the case of the agriculture ad, "Mr. William Farley was billed directly and has paid for the cost out of his personal funds."

With these exceptions, we concur in the brief of the General Counsel and with its recommendation that the Commission find no probable cause to believe that Farley Industries, Inc., or William Farley, Chairman, violated 2 U.S.C. § 441b(a).

For William Farley and
Farley Industries, Inc.
by Alex R. Seith,
its Counsel

October 12, 1988

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SECRETARIAT

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BEFORE THE FEDERAL ELECTION COMMISSION

EXECUTIVE SESSION
DEC 01 1988
SENSITIVE

In the Matter of	)	
	)	
William F. Farley, Chairman Farley Industries, Inc.	)	MUR 2541

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 5, 1987, Samuel Osborne filed a complaint against William Farley and Farley Industries, Inc. On January 26, 1988, the Commission found reason to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a) in connection with the corporation's payment for certain advertisements. An investigation then ensued which included two sets of interrogatories. On September 19, 1988, this Office notified the Commission that it was prepared to close the investigation in this matter and on October 3, 1988, this Office mailed a brief to the respondents and circulated a copy of the brief to the Commission. The following analysis incorporates General Counsel's brief by reference. Respondents filed a brief with the Commission on October 17, 1988.

II. ANALYSIS

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for a corporation to make a contribution or expenditure in connection with any election for federal office, and it is unlawful for any officer or director of any corporation to consent to any contribution or expenditure by the corporation. The terms "contribution" and "expenditure" are defined at 2 U.S.C. § 441b(b)(2) to mean any direct or indirect payment,

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distribution, loan, advance, deposit, or gift of money or any services or anything of value to any candidate, campaign committee or political party or organization in connection with any election to federal office.

The ad specifically referenced in the complaint appears to have been made in connection with a federal election. The full text of the advertisement referenced in the complaint (hereafter "the Agriculture ad") reads:

ANNOUNCER: Ladies and gentlemen, Bill Farley, Chairman of Farley Industries

BILL ON CAMERA: Rural America remains the very backbone of this nation's economy. *Which is why I care deeply that America's next President have realistic ... courageous ... ideas that will revitalize American agriculture*. The first step in revitalizing rural America is to lower interest rates. Lower rates will keep seed, feed and machinery costs down ... increasing our father's profits and the value of their land. The second step in revitalizing rural America is to expand our export markets. We can do that by: keeping the dollar at a competitive and realistic rate. By negotiating firmly and courageously with our trading partners. And by having the vision to develop new markets for U.S. agriculture ... *proposed legislation such as Congressman Gephardt's is not realistic*. It will artificially raise prices and slam shut our international markets. It will hurt rural America. No business person can have total confidence in the strength of America's economy if American agriculture is not healthy. Our nation thrives, when rural America thrives. *I want our presidential candidates to think about that*.

(Fade to Farley's signature -- white type on black background) (emphasis added). Respondents claim that this as was not made "in connection with a Federal election." Rather, they claim that this ad was "merely an expression of Mr. Farley's views on one

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aspect of agriculture ans international trade."

This Office disagrees. Although one objective of the above ad may have been to raise public consciousness about the necessity for economic reforms affecting agriculture, the ad contains the clear message that the position of a specific presidential candidate, Richard Gephardt, was detrimental to rural America. This message, especially when viewed in conjunction with its airing during a period of intense presidential campaigning in Iowa, appears to have been geared toward convincing viewers of the ad that they should not vote for Richard Gephardt in 1988. While the ad contains no specific exhortation to vote against Gephardt, the absence of such an exhortation does not prevent this ad from being a message "in connection with a Federal election."

Although it appears that the above ad was made and aired "in connection with" a federal election, Farley Industries, Inc. did not pay for the production and broadcasting of this ad. Respondents submitted a letter from Grey Advertising, Inc., dated June 13, 1988, stating that William Farley made an oral contract with Grey for the Agriculture ad. Pursuant to this contract, Grey stated that it billed William Farley directly for the $50,000 cost of the Agriculture ad and William Farley paid the bill from his personal funds. As the Agriculture ad appears to have been contracted and paid by William Farley personally, rather than by Farley Industries, Inc., there does not appear to have been any corporate expenditure for this ad. Therefore, there does not appear to be a violation of 2 U.S.C. § 441b(a).[1]

The respondents also provided transcripts of three television commercials featuring William Farley which were aired and paid for by Farley Industries, Inc. in 1987. However, none of these ads mentioned campaigns, candidates or elections for federal office; rather they focused on management strategies in American manufacturing and end with the statement "FARLEY INDUSTRIES. AMERICA'S MOST EXCITING GROWTH COMPANY." Respondents claim that the purpose of these ads was for "Farley Industries, through Mr. Farley to express its views on American Manufacturing" and to promote the reputation of the company with the owners and potential buyers of its stock. In contrast, respondents claim that the purpose of the ad which contained the reference to Congressman Richard Gephardt was to state "Mr. Farley's views on Agriculture."

Additionally, respondents volunteered the text of two print ads which also promote "FARLEY INDUSTRIES America's most exciting growth company." These are similar to the latter three television commercials in that they describe Farley Industries' products and business philosophy. They make no reference to any campaign, candidate or election for federal office.

In conclusion, none of the ads other than the Agriculture ad appear to have been made in connection with federal elections. The Agriculture ad, which does appear to have been made in

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1. Respondents argue that even if this ad had been paid for by the corporation it would not be a violation of the Act. The Commission does not need to address this issue as such facts are not present in this matter.

connection with a federal election, was not paid for by Farley Industries, Inc. Accordingly, this Office recommends that the Commission find no probable cause to believe that Farley Industries, Inc. and William Farley, Chairman, violated 2 U.S.C. § 441b(a).[2]

III. **RECOMMENDATIONS**

1. Find no probable cause to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a).

2. Close the file.

3. Approve the attached letters.

Date 11/17/88

Lawrence M. Noble
Lawrence M. Noble
General Counsel

Attachments
1. Letter to respondents
2. Letter to complainant

Staff Assigned: Judybeth Greene

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2. The payment of the Agriculture ad by William Farley may raise a further question regarding whether this payment was an independent expenditure by William Farley which should have been reported pursuant to 2 U.S.C. § 443(c) and should have carried a disclaimer pursuant to 2 U.S.C. § 441d. Both of these provisions contain an express advocacy requirement. Although, as discussed above, the Agriculture ad appears to have been made "in connection with a Federal election" in that 1) it names a specific candidate; 2) refers to his presidential candidacy; and 3) criticizes his trade proposals, it does not specifically urge the viewer to do anything. Rather, it urges the presidential candidates, specifically Congressman Gephardt, to rethink their positions on trade issues. Moreover, while the ad may implicitly urge that the viewer vote against Congressman Gephardt in the presidential primaries, it similarly appears to urge viewers to contact Congressman Gephardt or others about Gephardt's proposed trade legislation. As William Farley's Agriculture ad does not contain express advocacy, it is not necessary to further discuss the issue.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2541
William F. Farley, Chairman)
Farley Industries, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 30, 1988, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 2541:

1. Find no probable cause to believe that William Farley, Chairman, and Farley Industries, Inc. violated 2 U.S.C. § 441b(a).

2. Close the file.

3. Approve the letters attached to the General Counsel's report dated November 17, 1988.

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

Attest:

11/30/88
Date

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

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1988

Alex R. Seith, Esquire
Lord, Bissell & Brook
115 South LaSalle Street
Chicago, Illinois 60603

RE: MUR 2541
William Farley, Chairman
Farley Industries, Inc.

Dear Mr. Seith:

This is to advise you that on November 30, 1988, the Federal Election Commission found that there is no probable cause to believe your clients, William Farley, Chairman and Farley Industries, Inc. violated 2 U.S.C. § 441b(a). Accordingly, the file in this matter has been closed.

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

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

Sincerely,

LM Noble (JBG)

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Samuel George Osborne
P.O. Box 512
Iowa Falls, IA 50126

RE: MUR 2541

Dear Mr. Osborne:

This is in reference to the complaint you filed with the Federal Election Commission on October 5, 1987, concerning certain ads featuring William Farley and certain financial activity by Farley Industries, Inc.

Based on that complaint, on February 2, 1988, the Commission found that there was reason to believe Farley Industries, Inc. and William Farley, Chairman, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. After an investigation was conducted and the General Counsel's brief and respondents' brief were considered, the Commission, on November 30, 1988, found that there was no probable cause to believe that Farley Industries, Inc. and William Farley, Chairman, violated 2 U.S.C. § 441b(a). Accordingly, the file in this matter was closed on November 30, 1988. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2541 E

DATE FILMED 1/6/89 CAMERA NO. 4

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2541.

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FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS
COMMISSION SECRETARY MWE

DATE: JANUARY 5, 1989

SUBJECT: STATEMENT ON MUR 2541 BY
COMMISSIONER JOAN D. AIKENS

Commissioner Aikens has requested that the attached statement be placed on the public record.

Attachment

cc: Commissioners

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Statement on Mur 2541
Joan D. Aikens

MUR 2541 was brought to the Commission via a complaint filed over a year ago. At that time, I did not believe either the facts of this case or the General Counsel's legal analysis of those facts were sufficient to support a reason to believe finding and thus voted against reason to believe.

Mr. Farley, as Chairman of Farley Industries, aired statements outlining Mr. Farley's views on several aspects of agriculture and international trade. The statement also made an incidental mention of a Congressman whose name was intricately associated with a major trade bill currently being debated before the Congress. While Congressman Gephardt was also a candidate for President at that time, there was no mention of his candidacy, much less any express advocacy for the election or defeat of the Congressman or any other candidate for any office.

Mr. Farley was simply exercising his constitutional right to speak out on issues of concern to him and the industries he represents. For those reasons, I could not vote to find reason to believe.

I voted for the General Counsel's recommendation to find no probable cause to believe that William Farley, Chairman, and Farley Industries, Inc., violated 2 U.S.C. Section 441b(a). However, I feel compelled to state for the record that my vote for "no probable cause" in no way reflects my support of the convoluted legal analysis accompanying that recommendation. To the contrary, I take issue with Counsel's analysis that the Agriculture advertisement was made "in connection with" a federal election and Counsel's suggestion in footnote 2 that this advertisement might qualify as an independent expenditure. Fortunately, a Commissioner's vote is cast only for the actual recommendation and not the underlying legal analysis.

Joan D. Aikens
Commissioner

January 4, 1989