FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2586

DATE FILMED 6/3/88 CAMERA NO. 2

CAMERANAN K.A.U.

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OCC#6676

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 MAR -4 PM 3:27

MUR 2586

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

March 4, 1988

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

This complaint is filed today by the Democratic Congressional Campaign Committee ("DCCC") challenging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. §§ 431 et seq., and related regulations of the Federal Election Commission ("FEC"), 11 C.F.R. §§ 100.1 et seq., by Conservatives for Hope and Opportunity ("CHO" or "Respondent"), a political committee (FEC I.D. No. C00192104).

DCCC seeks an immediate investigation by the FEC into the activities of CHO to date and those that CHO has proposed to undertake in the immediate future. Statements made by CHO on the public record indicate that Respondent is currently in violation of the FECA and apparently intends to compound this violation by committing additional actions contrary to the federal election laws.

Background

On January 31, 1988, CHO filed its 1987 year-end public disclosure report (covering the period July 1, 1987 through December 31, 1987) with the Federal Election Commission. The report disclosed cash-on-hand of $1,060.00 and debts and obligations owed by the committee of $54,635.40. The report was accompanied by a letter, signed by the treasurer of CHO, which stated that the committee had "ceased fundraising," but would continue to have some income from list rental proceeds.

The letter goes on to state that "[s]ome -- but not all -- of the corporations involved in the fundraising activities [of the committee] have given permission for [CHO] to distribute money to political candidates even though this increases the amount of the corporate debt which will remain unpaid." The committee concludes by requesting guidance on the legality of their proposed course of action.

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<u>The Law</u>

The FECA prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b. The term "contribution" includes "anything of value," such as goods or services provided at no charge or at less than the fair market charge. 11 C.F.R. § 100.7(a)(1)(iii).

The Commission's regulations also include within the definition of "contribution":

> The extension of credit by any person for a length of time beyond normal business or trade practice . . . unless the creditor has made a commercially reasonable attempt to collect the debt . . . [And] a debt owed by a political committee which is forgiven or settled for less than the amount owed . . . unless such debt is settled in accordance with the standards set forth at 11 C.F.R. § 114.10.

11 C.F.R. § 100.7(a)(4).

The debt settlement procedures referred to in the above paragraph impose certain affirmative requirements on both the debtor and the creditor in order for such a settlement not to be considered a contribution. Section 114.10 requires the debtor to undertake "all commercially reasonable efforts to satisfy the outstanding debt." 11 C.F.R. § 114.10(c)(2). The creditor must be able to demonstrate that it has "pursued its remedies in a manner similar in intensity to that employed by the corporation in pursuit of non-political debtors." 11 C.F.R. § 114.10(c)(3).

Even if these criteria are met, the debtor and/or the creditor must submit a statement of settment to the Commission for review. <u>Id.</u>

<u>Discussion</u>

CHO and its corporate creditors have apparently already violated the provisions of the FECA barring contributions in-kind by corporations. If they pursue the plan proposed in CHO's letter of January 31, 1988, they will further violate these provisions.

CHO's year-end report discloses over $54,000 in debts and obligations owed to numerous creditors, at least some of whom are, by CHO's own admission, corporate entities. The majority of the debts disclosed by the committee on its Schedule D were outstanding at the beginning of the reporting period (July 1, 1987) and had not been paid by the close of the reporting period (December 31, 1987). From the letter submitted by CHO with its report, it seems obvious that these debts were also not retired by the date of the submission of the report (January 31, 1988) and were not likely to be retired in the near future, if at all.

This means that these corporate entities have extended CHO credit for over seven months, far beyond "normal business or trade practice." CHO has, therefore, accepted prohibited corporate contributions. Only if those creditors have made a "commercially reasonable attempt to collect the debt," can CHO escape this conclusion. This apparently has not been done. In fact, according to CHO's letter, some of the creditors are clearly on notice that CHO will be receiving additional funds, but have nonetheless given permission to CHO to use these funds not to retire the obligations owed to them, but to make contributions to federal candidates.

This practice does not qualify in anyone's book as a commercially reasonable attempt to retire a debt. These corporate creditors have been notified that the CHO will have additional funds available to it. Instead of making all reasonable attempts to secure these funds for the retirement of their debt, or to ensure that the funds will be used in further fundraising efforts by CHO, these corporations have given CHO permission to use those funds for a purpose unrelated to the generation of additional income.

Furthermore, it does not appear that either CHO or any of the corporate creditors have submitted to the Commission a settlement statement regarding any of the debts in question. This is despite the fact that CHO has declared, on the public record, that it does not intend to pay these creditors at any time or in any amount.

CHO and its corporate creditors have already violated the provisions of the FECA by making and receiving prohibited corporate contributions. They now intend to compound this violation by subsidizing CHO's activities in support of federal candidates. The FEC's extension of credit regulation is designed to prevent just this type of situation. To allow CHO to support federal candidates with funds received while it still owes large corporate debts it has no intention of paying is to allow the corporate creditors to make indirectly what they are prohibited from making directly -- contributions and expenditures in connection with federal elections.

Conclusion

On the basis of the foregoing, DCCC requests that the FEC:

1. Conduct a prompt and immediate investigation of the facts and legal conclusions stated in this Complaint;

2. Enter into prompt conciliation with Respondent to remedy the violations alleged in this Complaint, and most importantly, to ensure that no future violations occur; and

3. Impose any and all penalties grounded in the violations alleged in this Complaint.

Respectfully submitted,

Robert F. Bauer, Counsel
Democratic Congressional Campaign Committee

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Subscribed and sworn to before me this 4th day of March, 1988.

Notary Public

My commission expires 7/14/91

16680

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1988

Robert F. Bauer, Counsel
Democratic Congressional Campaign
Committee
Perkins Coie
1110 Vermont Avenue, NW
Washington, DC 20005

RE: MUR 2586

Dear Mr. Bauer:

This letter acknowledges receipt of your complaint, received on March 4, 1988, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Conservatives For Hope And Opportunity and Robert R. Weed as treasurer. 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 2586. 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

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

8804070335

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1988

Robert R. Weed, Treasurer
Conservatives For Hope And Opportunity
111 Massachusetts Avenue, NW
#200
Washington, DC 20002

RE: MUR 2586
Conservatives For Hope And Opportunity
Robert R. Weed, as Treasurer

Dear Mr. Weed:

The Federal Election Commission received a complaint which alleges that Conservatives For Hope And Opportunity and you, as treasurer, 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 2586. 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 Conservatives For Hope And Opportunity 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.

If you have any questions, please contact Anne Weissenborn, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by
By: Lois G. Lerner
Associate General Counsel

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

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 MAR 25 AM 11:29

Robert R. Weed
ATTORNEY AT LAW
SUITE 200, 111 MASSACHUSETTS AVENUE NW
WASHINGTON, D.C. 20001

RECEIVED
FEDERAL ELECTION COMMISSION
88 MAR 25 PM 4:49

March 24, 1988

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
Washington, DC 20463

MUR 2586

Dear Mr. Noble:

Conservatives for Hope and Opportunity, through failure of its fundraising program, found itself in debt without hope of getting out.

Preliminary to filing a termination report, CHO requested the guidance of the Commission on this question: Whether a committee may make a contribution to political candidates when the committee knows that it will be unable to pay its corporate creditors in full.

CHO was aware that such a contribution might be construed to be an indirect corporate contribution and therefore illegal under the act.

Now the DCCC by Robert Bauer, Counsel, volunteer their view that such contributions would in fact be improper.

Mr. Bauer then goes further to contend that the very act by CHO of asking the question to the Commission constitutes a violation of the act.

The core principles of our law refute Mr. Bauer's contention. Criminal law requires an intention to commit and act, and the act itself. Inquiring whether a course of action is legal does not constitute an intention to commit that act; far less is it the act itself.

Mr. Bauer goes on to argue that the very fact that CHO has corporate debts which we have been unable to pay constitutes a violation of the act.

The very regulations cited by Mr. Bauer disprove this contention. There would be no need to have regulations covering the payment and settlement of corporate debt, if the existance of such debt by itself were illegal.

Therefore, CHO and Robert R. Weed request that no action be taken.

Respectfully submitted,

Robert R. Weed
Treasurer
Conservatives for Hope
and Opportunity

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FEDERAL ELECTION COMMISSION
SECRETARIAT

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SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR #2586
DATE COMPLAINT RECIEVED
BY OGC 3/4/88
DATE OF NOTIFICATION TO
RESPONDENTS 3/11/88
STAFF MEMBER: Anne Weissenborn

COMPLAINANT: Democratic Congressional Campaign Committee

RESPONDENTS: Conservatives for Hope and Opportunity
Robert R. Weed, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 437f
2 U.S.C. § 441b
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 112.1
11 C.F.R. § 114.10

INTERNAL REPORTS CHECKED: Conservatives for Hope and Opportunity

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated as a result of a complaint filed by the Democratic Congressional Campaign Committee. Respondents Conservatives for Hope and Opportunity ("the Committee") and Robert R. Weed, as treasurer, were notified of the complaint on March 11, 1988, and their response was received on March 25, 1988.

II. FACTUAL AND LEGAL ANALYSIS

The complainant in this matter alleges that ("the Committee") and Robert R. Weed, as treasurer, together with unspecified corporate vendors, have violated 2 U.S.C. § 441b and will do so again in the future. These allegations are based upon a letter from the treasurer of the Committee to the Commission

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dated January 31, 1988, which asked for advice on whether the Committee could "legally make contributions to candidates at a time when we know we will be unable to pay our corporate creditors in full." This question was prefaced by statements explaining that the Committee "cannot get out of debt," that it has stopped raising funds but will continue to receive income from list rentals, and that certain corporate creditors have "given permission to us to distribute money to political candidates even though this increases the amount of corporate debt which will remain unpaid." (Attachment 1).

According to its 1987 Year-End Report, the Committee owed $54,635.40. Of this amount $10,250 was owed three individuals, $13,475.68 was owed to the Bob Weed Company (non-incorporated), and the remainder was owed 10 apparently corporate vendors. The complainant argues that the debts owed the corporate creditors have been outstanding for more than seven months (the last half of 1987 plus January, 1988) and thus for far longer than "'normal business practice.'" Nor have debt settlement statements been filed. The complainant asserts that, in light of the corporate vendors' apparent failures to make reasonable efforts to collect, as witness the treasurer's January 31 letter, the Committee and its corporate creditors have made and accepted corporate contributions. Thus, the complainant argues, they have already violated the Act and will "compound this violation" in the future "by subsidizing [the Committee's] activities in support of federal candidates."

2 U.S.C. § 441b prohibits the making and acceptance of corporate contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2) defines contribution or expenditures to include "any direct or indirect payment ... or any services, or anything of value to any ... campaign committee, political party or organization, in connection with any [federal] election ...." 11 C.F.R. § 114.10 permits corporations to extend credit to political committees so long as the credit is extended in the ordinary course of business. Such debts may not be forgiven or settled unless the creditor "has treated the outstanding debt in a commercially reasonable manner," and any settlement must be submitted to the Commission for review. 11 C.F.R. § 114.10(b) and (c).

2 U.S.C. § 437f and 11 C.F.R. § 112.1 permit any person to request of the Commission in writing an advisory opinion regarding the application of the Act, provided that the request sets forth a specific transaction or activity which the requestor plans to undertake or is presently engaged in and plans to continue.

Although the Committee's letter of January 31, 1988, was placed on the public record, it did not come to the attention of the Office of the General Counsel until March 8. On March 16, a letter was sent to Robert Weed by this Office asking whether the Committee wished to request an advisory opinion on the issue raised in the January letter, and informing him that more information would be needed if he wanted the inquiry to be so treated.

No response has been received to the above letter; however, the Committee through Mr. Weed has responded to the complaint in the present matter. (See Attachment 2). In his response, Mr. Weed states that the Committee "was aware" that if it made a contribution to a candidate while unable to pay its creditors in full, "such a contribution might be construed to be an indirect corporate contribution and therefore illegal under the Act." Mr. Weed interprets the complaint as saying that the act of asking the question of the Commission constitutes a violation, and argues that an inquiry about the legality of a course of action "does not constitute an intention to commit that act; far less is it the act itself."

The Committee has committed no violation of the Act in asking about the legality of making contributions while unable to meet debts owed corporations. However, evidence of such activity in the Committee's reports could constitute the basis for a finding of reason to believe.

The Committee filed its Statement of Organization on March 25, 1986. According to its reports, its most recent contribution to a candidate or committee was made on October 29, 1986. All of the Committee's 1987 income of $14,211.90 was used to make payments to vendors.

The Committee's debts of $54,635.40 as of December 31, 1987, were incurred during the second half of 1986, with those owed corporate vendors having been apparently related to a direct mail solicitation carried out in November or December of that year. Therefore, the debts owed commercial vendors have been outstanding for more than a year. Neither the Act nor the regulations, however, sets specific time limits for the payment of corporate debts, and continuing efforts to meet a committee's obligations would constitute evidence that corporate contributions are not intended.

The Committee's letter of January 31 does present a scenario which, if implemented, could result in corporate contributions to the Committee by any vendors who agree that contributions to candidates should be given priority. On the other hand, there is nothing in its reports to date to indicate that contributions have in fact been given precedence over payments to creditors, and the Committee has itself raised questions about the legality of such a procedure. Therefore, any finding of reason to believe at this time would be premature.

This Office recommends that the Commission find no reason to believe that the Committee has violated 2 U.S.C. § 441b and close the file in this matter.

RECOMMENDATIONS

1. Find no reason to believe that Conservatives for Hope and Opportunity and Robert R. Weed, as treasurer, have violated 2 U.S.C. § 441b.

2. Close the file in this matter.

3. Approve the attached letter.

Lawrence M. Noble
General Counsel

4/29/88
Date

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

Attachment
1. Response
2. Letter

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Conservatives for Hope and Opportunity Robert R. Weed, as treasurer	))))	MUR 2586

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 4, 1988, the Commission decided by a vote of 6-0 to take the following actions in MUR 2586:

1. Find no reason to believe that Conservatives for Hope and Opportunity and Robert R. Weed, as treasurer, have violated 2 U.S.C. § 441b.
2. Close the file in this matter.
3. Approve the letter, as recommended in the First General Counsel's report signed April 29, 1988.

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

Attest:

5/5/88
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Mon.,	5-2-88,	12:10
Circulated on 48 hour tally basis:	Mon.,	5-2-88,	4:00
Deadline for vote:	Wed.,	5-4-88,	4:00

8804070346

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 9, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert I. Bauer, Counsel
Democratic Congressional
  Campaign Committee
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C 20005

RE: MUR 2586

Dear Mr. Bauer:

On May 4, 1988, the Federal Election Commission reviewed the allegations of your complaint dated March 4, 1988, and found that, on the basis of the information provided in your complaint and information provided by the respondents, there is no reason to believe Conservatives for Hope and Opportunity and Robert Weed, as treasurer, violated 2 U.S.C. § 441b. Accordingly, on May 4, 1988, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
  General Counsel's Report

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 9, 1988

Robert R. Weed, Treasurer
Conservatives for Hope and Opportunity
Suite 200
111 Massachusetts Avenue, N.W.
Washington, D.C. 20001

RE: MUR 2586

Dear Mr. Weed:

On March 11, 1988, the Federal Election Commission notified Conservatives for Hope and Opportunity ("the Committee"), and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 4, 1988, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Committee, and you, as treasurer, violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

The Committee is cautioned that the Commission's determination does not constitute approval of the distribution of funds to political candidates while debts are owed corporate creditors. If the Committee is contemplating pursuit of such a course of action, you are urged to request an advisory opinion on its legality under the Act. (See letter to the Committee from the Office of the General Counsel dated March 16, 1988, regarding the Committee's intention to request an advisory opinion).

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2586

DATE FILMED 6/3/88 CAMERA NO. 2

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