



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2677

DATE FILMED 3/29/91 CAMERA NO. 4

CAMERAMAN AS

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GUY VANDER JAGT, M.C.
CHAIRMAN

JOSEPH R. GAYLORD
EXECUTIVE DIRECTOR



GCC# 211

320 FIRST STREET, S.E.
WASHINGTON, D.C. 20003

202-479-7000

AMR 2677

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

August 24, 1988

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20004

Dear Mr. Noble:

This Complaint, by the National Republican Congressional Committee, 320 First Street, S.E., Washington, D.C. 20003, against Rosemary Pooler and the Friends of Rosemary Pooler (FEC ID # 119318) and Friends of Rosemary Pooler '88 (FEC ID # 123838), P.O. Box 1062, Syracuse, New York 13201, is filed with Exhibits with the Federal Election Commission ("FEC") pursuant to 2 U.S.C section 437g(a) of the Federal Election Campaign Act of 1971, as amended ("the Act").

Rosemary Pooler ("Pooler"), a candidate for the U.S. House of Representatives from New York's Twenty-seventh Congressional District, and Friends of Rosemary Pooler (FEC ID # 119318), Pooler's 1986 principal campaign committee ("the 86 Committee") and Friends of Rosemary Pooler '88 (FEC ID # 123838), Pooler's 1988 principal campaign committee ("the 88 Committee"), have accepted inkind corporate contributions violative of the Act. 2 U.S.C. section 441b(a). Pooler has also violated the Act by converting campaign funds to personal use. 2 U.S.C. section 439a.

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FEDERAL ELECTION COMMISSION

I. FACTS

According to press accounts (Exhibit A), Pooler secured office space at 224 Harrison Street, Suite 202, Syracuse, New York for use by the 86 Committee and the 88 Committee, as well as personal use. However, as noted by the press accounts and confirmed by a review of the Reports filed by the 86 Committee and the 88 Committee on record with the FEC, no security deposit was paid for the use of the office and no rent was paid until June 11, 1987, some seven months after the Committees took possession of the office. A review of the Mid-Year Report by the 86 Committee shows that the June 11th check was in the amount of \$497.89. Further review of the Reports filed by the 86 Committee reveals a \$21.75 rent check on August 19, 1987 and a check for \$253.07 on November 4, 1987. These checks actually only covered the cost of the utilities.

Review of the Year-End Report filed by the 88 Committee reveals that a check for \$300 was written on December 28, 1987 to cover rent for November and December 1987. The 88 Committee then, according to the First Quarter Report, wrote a \$750 check on March 15, 1988 to cover the rent for the first three months of 1988.

All of the rent checks were written to Eagan Real Estate, a New York corporation which acted as the real estate agent for the owner of the building, Lumbermen's Mutual Casualty Co., an Illinois

corporation licensed to do business in New York.

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In total, the 86 Committee and the 88 Committee paid \$1,822.71 for rent and utilities for sixteen and one-half months for the 42-by-12 foot office, or about \$.23 per square foot. According to the press accounts, other tenants in the office building are charged between \$10 and \$12 per square foot for space. For example, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor, has a yearly lease to pay \$9,000 for 900 square feet, according to press accounts.

The rent paid by the 86 Committee and the 88 Committee was substantially less than the usual and normal charge for other tenants. Thus, the difference between the usual and normal charge (i.e., the fair market rent of \$10 to \$12 per square foot) and what was actually charged Pooler and the Committees (i.e., \$.23 per square foot) represents inkind contributions under the Act. Since the inkind contributions come from a prohibited source (i.e., either Eagan Real Estate, a New York corporation or Lumbermen's Mutual Casualty Co., an Illinois corporation), acceptance of the contributions are, on their face, violations of the law.

Additionally, according to press accounts, Pooler has readily admitted that she also used the office space for personal business. Since campaign funds were used to pay the rent, as meager

as the payments were, the office space became campaign space. Use by Pooler of campaign space for personal business represents a conversion of campaign funds to personal use in violation of the Act.

II. DISCUSSION

A. ACCEPTANCE OF AN ILLEGAL INKIND CORPORATE CONTRIBUTION.

Corporate contributions are specifically prohibited by the Act.

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office (2 U.S.C. section 441b(a)).

The prohibition applies whether the contribution is in the form of money, goods, or services. The prohibition applies whether the contribution is a direct contribution or an inkind contribution.

Additionally, where "goods or services [are provided to a candidate] without charge or at a charge which is less than the usual and normal charge for such goods or services," an inkind contribution develops. 11 C.F.R. section 100.7(a)(iii)A. That is, a discount below the "usual and normal charge" which is not routinely offered in the vendor's ordinary course of business to nonpolitical clients represents an inkind contribution. See, FEC Advisory Opinion 1978-45 1 Fed. Election Camp. Fin. Guide (CCH),

Para. 5337 (1978), see also, 1 Fed. Election Camp. Fin. Guide (CCH),
Para. 6002 (1976).

Thus, by discounting the rent on the office space at 224 Harrison Street, Suite 202, below the "usual and normal charge" (a discount which is apparently not offered to nonpolitical clients), Eagan Real Estate and Lumbermen's Mutual Casualty Co. have made illegal inkind corporate contributions. By accepting the illegal inkind corporate contributions, Pooler and the Committees have violated the Act.

B. ILLEGAL CONVERSION OF CAMPAIGN FUNDS TO PERSONAL USE.

The Act generally provides that campaign funds may be used to defray the expenses of holding a Federal office. Specifically, 2 U.S.C. section 439a states that:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, . . . , may be used for any other lawful purpose, . . . ; except that, . . . , no such amounts may be converted by any person to any personal use,

According to press accounts, Pooler has stated publically that she used the office space, rented using campaign funds, for personal business. The personal business took the form of using the campaign space as a base of operation to help her find a job. This use, or misuse, of the campaign space represents a conversion of campaign funds to personal use by Pooler in violation of the Act.

III. CONCLUSIONS

By accepting the illegal inkind corporate contributions, Pooler and the Committees have violated the Act. Also by misusing campaign space for personal purposes, Pooler has converted campaign funds in violation of the Act.

IV. PRAYER FOR RELIEF

Complainant respectfully requests that the FEC investigate these violations and enforce the Federal Election Campaign Act and the Commission's regulations.

Complainant further requests that the FEC seek the maximum fines for the violation set forth above, and take all steps necessary to prevent Pooler from continuing her illegal activity.

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V. VERIFICATION.

The undersigned swears that the allegations and facts set forth in this complaint are true to the best of his knowledge, information and belief.



Joseph R. Gaylord
Executive Director
National Republican
Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

Subscribed and sworn before me this ⁷⁶~~24~~ day of August, 1988.


Notary Public

My Commission Expires: ~~My Commission Expires June 14, 1991~~

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EXHIBIT A

21040332068

August 19, 1988

Pooler's Low-Rent Bargain

Candidate Defends Office Space Cost

By WILLIAM LaRUE

Rosemary Pooler launched her second bid for Congress last year in downtown office space for which she signed no lease, made no rent payments in the first seven months and eventually paid far less than the rate charged to other tenants on the same floor.

Pooler, a Democrat, won the favorable "We Complied" rental terms from a real estate manager who is both a close friend and former treasurer of the Onondaga County Democratic Party.

The normal rent for the office at 224 Harrison St. would be \$6,480 a year, based on the building's standard rate of \$12 per square foot.

For the first 12 months, records show, Pooler paid \$772.71.

In total, her 1986 and 1988 congressional campaign organizations paid \$1,822.71 for 16½ months' rent — including a check for \$750 a few days before she moved in April to new headquarters on East Genesee Street, according to reports she filed with the Federal Election Commission.

Federal law requires candidates for Congress to report contributions to their campaigns that have a value of \$200 or greater.

But Pooler said she doesn't consider her discounted rent to be a campaign donation, and she did not report it as such.

"My belief always is that we complied with the law. I believe in that and that we would always want to," said Pooler, 50, an attorney and a former state public service commissioner.

The office in the Syracuse Building was used to store 1986 records, update mailing lists, make and receive telephone calls, write thank-you notes to supporters and raise campaign funds for 1986 and later for 1988, she said. Pooler said she also used the office for personal business.

Pooler said she paid no rent initially because the office was intended to be a temporary arrangement for an inactive campaign. She said she began to pay when she saw it was a long-term deal.

"We didn't know how long we were going to stay. So it really was just temporary," Pooler said. "... (I) it was sort of a place to land. I didn't see it as a working office by any means. I saw it much more as a place to store things. There was in fact no campaign."

The 1986 campaign organization was active after the election.

Because it had debts and Pooler was raising money to pay them off, she was required to file reports every six months with the Federal Election Commission. Even now, she said, she owes about \$10,000 from the 1986 campaign.

Campaign disclosure reports show that Pooler's campaign paid no security deposit for use of the office in the Syracuse Building and did not write its first rental check until June 11, 1987, seven months after she moved in. The check was for \$497.89, records show.

It is unclear from Pooler's FEC statements, and from interviews with the candidate and her staff, exactly which months her early rent checks covered. However, later records indicate Pooler paid only after using the space.

Records show that Pooler's 1986 campaign organization also wrote a \$21.75 rent check to Eagan Aug. 19, 1987, and one for \$253.07 Nov. 4, 1987. The three rent checks for the first 12 months total \$772.71.

In contrast, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor, has a yearly lease to pay \$9,000 for 900 square feet, according to Executive Director Brian Cahill.

"We're lower (on rent) than a lot of them," Cahill said. "We pay \$10 a square foot. I know we go a deal because we're an association."

There is now no tenant in Suite 202, other tenants said this week.

Pooler said her 1988 campaign became official Oct. 27, 1987, when she filed a statement of organization with the FEC, a requirement after raising \$5,000 in contributions for the current race.

In interviews this week, Pooler press aide George Allen stated that her 1988 campaign activities really didn't begin until Oct. 27.

"So that is the point when she started paying rent (from the 1988 campaign) on the office. Everything beforehand is irrelevant because she was a private citizen," Allen said.

However, campaign disclosure forms show that Friends of Rosemary Pooler '88 — not the 1986 group — paid the office's electric bill of \$173.72 for an eight-month period beginning July 1987. The 1988 campaign also paid a \$613.68 telephone bill in September 1987, records show.

Pooler said some office expenses were split between the two campaigns because both were running at the same time. She said she cannot give a date when she began running up expenses only for the 1988 campaign.

"There's not a moment where you say, 'OK, ... all the (1986) paper's off my desk. From now we're only looking to the future.' And even now we still have loose ends from '86," she said.

Dec. 28, 1987, Pooler's 1988 campaign wrote a check for \$300 to cover rent for November and December 1987.

Allen said rental charges then increased to \$250 a month in January after Pooler requested a more flexible stipulation to give her a month — instead of a week — to find another place if a permanent tenant was found.

Records show the next rent payment, \$750, was made March 15, the date Pooler announced her candidacy at the Hotels at Syracuse Square.

Her campaign moved into the second-floor office in the Syracuse Building Nov. 15, 1986, less than two weeks after she lost the 27th District election to Rep. George Wortley, R-Fayetteville. Pooler said she installed a phone with the same number as her 1986 campaign, stored 1986 campaign records in the office and worked there on campaign matters on and off until this March.



POOLER

August 21, 1988

Although Pooler said there was never a written lease, the campaign obtained a two-paragraph letter from McAuliffe dated March 15 in which terms of a \$250-a-month rental arrangement were outlined "commencing March 1, 1988."

Around the end of March, the Pooler campaign left the Syracuse Building.

She is now paying \$800 a month in rent for a suite of offices at 550 E. Genesee St., according to her latest campaign disclosure report. She also paid a \$1,600 security deposit April 4 and is now paying rent at the start of each month.

Because she had an oral agreement to vacate the 45-by-12-foot office on a week's notice if a permanent tenant was found, Pooler said, the low rent was a fair amount to pay.

However, John McAuliffe, who manages the building for Eagan Real Estate, said Pooler got a special deal for political and personal reasons. She was initially charged only for electricity, he said, then later paid an "escalation" charge to help offset building maintenance costs.

"She is a friend of mine," said McAuliffe, county Democratic treasurer in the 1970s. "The space was available and I said, 'If you just pay the electric charge, you can have it as long as you get out on a week's notice.' ...

"You know, we often rent spaces out for political purposes. You rent them out either as a contribution or as a minimum rent. I don't know anybody in politics who pays normal rent."

Pooler said McAuliffe is mistaken if he considers the office space to be a campaign contribution.

If the rental arrangement was a donation, it raises legal questions for Eagan Real Estate and the owner of the building, Lumbermen's Mutual Casualty Co., which has an office in Syracuse. Federal election law prohibits a business from donating anything of value to a federal campaign.

Lumbermen's spokesman Kenneth Gruszecki said Thursday that Eagan handles management of the Syracuse Building and that he knew nothing about Pooler's rental arrangement.

"We often rent spaces out for political purposes. You rent them out either as a contribution or as a minimum rent. I don't know anybody in politics who pays normal rent." — John McAuliffe property manager

Fred Elland, a spokesman for the Federal Election Commission, said he could not comment on Pooler's finances or judge whether the rental arrangement amounted to a campaign contribution.

But he said candidates for federal office who raise \$5,000 or more are required to report all donations and expenses in connection with their campaigns — even those made before a candidacy is declared. He also said services or property given to a campaign for less than the market rate must be reported in most cases as "in-kind contributions."

"When you talk about the use of property or that sort of thing, the value would have to be the going rate. The value is considered that paid by others in the area," Elland said.

A candidate who obtains something of value significantly below market value and doesn't report it as a contribution may be asked by the FEC to prove it was just a good deal and not a donation, Elland said.

"There's always the possibility for arguments being made," he said.

A willful violation of federal election law could result in civil penalties of \$10,000 or a fine equal to twice the illegal donation.

Pooler's 1986 committee, Friends of Rosemary Pooler '86, was fined \$500 last year by the FEC for violating federal election law by sending solicitations for a fund-raiser without a disclaimer stating who paid for the letter.

Pooler's opponents in this year's bid for Congress are Democrat Stephen Bowman, who is paying \$400 a month in campaign office rent, and Republican James Walsh, who is paying \$1,500 a month.

McAuliffe and Pooler in separate interviews said they couldn't recall who initiated the deal in November 1986 in which Pooler obtained space in Suite 202 of the Syracuse Building.

"I don't know," she said. "I remember I went and looked. I thought it would be certainly sufficient for our use."

After losing to Wortley in 1986, Pooler said, she was faced with several problems. She had only a week or so to get out of her old headquarters on East Fayette Street, she had boxes of records to store, and she faced an unexpected campaign debt of \$33,100.

August 20, 1988

The Editorial Page

IN OUR OPINION

Pooler's Bargain

Democratic congressional candidate Rosemary Pooler has been getting gobs of money from special-interest groups. One would think she'd have enough to pay her rent for office space. Well, that's not exactly accurate; she paid the rent, but let's say it was a bargain.

She had an office in downtown Syracuse that normally rents for \$6,480 a year; Pooler spent \$772.71 on it in 12 months. Records show that she didn't pay anything for the first seven months and then came up with a check for \$497.89; she never did pay a security deposit. She denies the bargain amounts to a political contribution, although federal election law indicates otherwise. Besides, she says the space was used mostly for storage and not as a fully active campaign facility. No one else in the building is known to get a substantially cut-rent rate based on usage.

The fact that the guy who rented her the space is a former Democratic county treasurer may have had something to do with her good fortune. He says he let her have the space for political purposes, she says he's mistaken because that might be a violation of the law and she certainly wouldn't be a party to such shenanigans.

Pooler says she's still in debt to the tune of some \$10,000 from her unsuccessful 1986 campaign. But the money seems to be flowing in to cover her current race expenses. Strangely, fat sums of money are coming into her war chest from outside the district.

The most recent fund report shows she got \$42,470 from 503 contributors living outside the congressional district; she also got \$67,486 from Political Action Committees with addresses that would not be

familiar to district residents. One of Pooler's PAC contributions, \$500, came from TV producer Norman Lear's People for the American Way, which no doubt has an intense interest in the local issues confronting residents of Onondaga and Madison counties.

Which raises another question on

the current drift of campaign financing. Outside money is becoming increasingly intrusive in local races, particularly special-interest money coming from PACs. PACs in the past couple of years have doled out almost \$185 million across the country with virtually no restrictions or limitations. They are fast becoming the legitimate bag men for corporations and other entities that are forbidden by law to make direct handouts in federal campaigns.

It's a growing scandal of national proportions but unlikely to be addressed by the politicians who are cashing in on the status quo. We happily report that Rosemary Pooler is now paying \$800 a month in rent in different digs, an obligation she can meet no doubt thanks to the outside special interests who, of course, want nothing in return for their largess if by some miracle she gets to work down along the Potomac.

Strangely, fat sums of money are coming into her war chest from outside the district.

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Pooler defends sweetheart rental deal

By Connie Bransfield
Staff Writer

A sweetheart rental arrangement with Eagan Real Estate was part of a negotiated deal to help her get a job — not an illegal campaign contribution, Rosemary Pooler said.

But such an arrangement could be challenged under federal election laws if it is considered a contribution in kind by a corporation, according to a spokesman for the Federal Election Commission.

Pooler paid only \$1,822.71 in rent and utilities for 16 months while she used a 42-by-12-foot room inside of a doctor's office suite last year. That comes to about 23 cents per square foot.

Other tenants in the building have said they are charged \$10 to \$12 per square foot for space in the building.

Federal election laws prohibit corporations from making contributions — cash or in kind — to a candidate in a federal election.

Pooler, 50 of 1605 Euclid Ave., is

running as a Democratic candidate for Congress from the 27th District.

Her opponent in the Sept. 15 Democratic primary, Stephen Bowman, pays \$400 a month rent for an office in the Wilson Building on Salina Street.

"As far as we know, it looks like a corporate contribution, and it's undisclosed and it's in excess of \$1,000," Bowman said. "She should give the money back."

James Walsh, the Republican candidate for the 27th District, pays \$1,500 a month to rent the first floor of a building at 329 W. Water Street. That building is owned by Charles Dominick.

Pooler said she rented the Eagan office two weeks after she lost her 1986 campaign against Rep. George Wortley, R-Fayetteville. She said she needed someplace to use as an office while she looked for a job. And she said she needed someplace to store her campaign records.

But she said when she rented the room she wanted to use it as a

place to help her find a job.

"I looked for work, good jobs and good wages," Pooler said. "I worked for the Assembly, and I negotiated with (Syracuse University) law school, and that's where I was when I was making those calls."

Pooler was in the office until March of 1988. She announced her candidacy in the current election in Oct. 1987 and at that time began paying \$150 rent per month, said George Allen, her spokesman.

If she had paid \$10 per square foot for a lease such as other tenants were paying, her rent would have been \$450 a month.

John McAuliffe, who manages the building for Eagan Real Estate, could not be reached for comment. McAuliffe is the former Democratic county chairman. Attempts to reach other Eagan representatives were unsuccessful.

Pooler said she deserved the low rent because McAuliffe wanted her to be able to move out at any time with only a week's notice.

"I don't think there were any

other tenants who were there on a week-to-week tenancy," Pooler said. "Fair market value is negotiable. It was very small. We never thought of it as a permanent place. I paid less and took the risk literally that someone would come in and take the space out from under me."

Fred Eiland, a spokesman in the press office of the Federal Election Commission, said if a candidate receives any donation, such as office space, typewriters or business machines, for a price less than its market value, the difference in price is considered a contribution in kind.

But Eiland said he could not comment on specific allegations of illegal contributions or say whether any official complaints had been made regarding Pooler's rent.

Pooler moved out of the office in March and into a larger suite of offices at 550 West Genesee St. She pays \$800 a month rent there.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

Joseph R. Gaylord
Executive Director
National Republican Congressional
Committee
320 First Street, SE
Washington, DC 20003

FE: MUR 2677

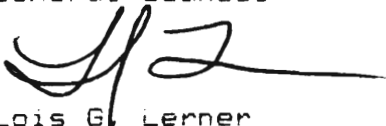
Dear Mr. Gaylord:

This letter acknowledges receipt of your complaint, received on August 24, 1988, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Friends Of Rosemary Pooler and James M. Hanley, as treasurer, Friends Of Rosemary Pooler '88 and James M. Hanley, as treasurer, Rosemary Pooler, Eagan Real Estate, and the Lumberman's Mutual Casualty Company. 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 2677. 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 Betha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: 
Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

James M. Hanley, Treasurer
Friends Of Rosemary Pooler
PO Box 1062
Syracuse, NY 13201

RE: MUR 2677
Friends Of Rosemary
Pooler and James M.
Hanley, as treasurer

Dear Mr. Hanley:

The Federal Election Commission received a complaint which alleges that Friends Of Rosemary Pooler 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 2677. 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 Friends Of Rosemary Pooler 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.

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If you have any questions, please contact Keith Morgan, the staff member 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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

James M. Hanley, Treasurer
Friends Of Rosemary Pooler '88
PO Box 1062
Syracuse, NY 13201

RE: MUR 2677
Friends Of Rosemary
Pooler, '88 and James
M. Hanley, as treasurer

Dear Mr. Hanley:

The Federal Election Commission received a complaint which alleges that Friends Of Rosemary Pooler '88 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 2677. 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 Friends Of Rosemary Pooler '88 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.

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If you have any questions, please contact Keith Morgan, the staff member 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

21040332077



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

Ms. Rosemary S. Pooler
PO Box 1062
Syracuse, NY 13201

RE: MUR 2677
Rosemary S. Pooler

Dear Ms. Pooler:

The Federal Election Commission received a complaint which alleges that you 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 2677. 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 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.

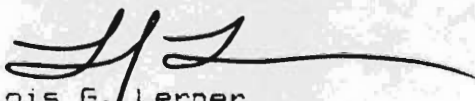
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21040332078

If you have any questions, please contact Keith Morgan, the staff member 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

2154033079



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

John Murphy, President
Eagan Real Estate
One Mony Plaza
Suite 1500
100 Madison Street
Syracuse, NY 13202

RE: MUR 2677
Eagan Real Estate

Dear Mr. Murphy:

The Federal Election Commission received a complaint which alleges that Eagan Real Estate 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 2677. 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 Eagan Real Estate 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 Keith Morgan, the staff member 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

91040832081



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 31, 1988

Joseph Luecke, President
Lumberman's Mutual Casualty
Company
Route 22
Long Grove, IL 60049

RE: MUR 2677
Lumberman's Mutual
Casualty Company

Dear Mr. Luecke:

The Federal Election Commission received a complaint which alleges that the Lumberman's Mutual Casualty Company 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 2677. 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 the Lumberman's Mutual Casualty Company 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 Keith Morgan, the staff member 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

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Long Grove, IL 60049 · 312 | 540-2000

September 12, 1988

Federal Election Commission
Washington, D.C. 20463

Attn: Lois G. Lerner
Associate General Counsel

RE: MUR 2677

Dear Ms. Lerner:

This will acknowledge receipt on September 6, 1988, of your letter of August 31, 1988 regarding the captioned matter.

Enclosed for filing is our Statement of Designation of Counsel.

We expect to provide a response to the General Counsel's office by September 21.

Very truly yours,


John K. Conway
Counsel

JKC:js
Enclosure

cc: Daniel J. Swillinger

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2677

NAME OF COUNSEL: Daniel J. Swillinger

ADDRESS: Barnett & Alagia

1000 Thomas Jefferson Street, N.W.

Washington, D.C. 20007

TELEPHONE: 202/342-0342

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

9-12-88
Date

John K. Conway
Signature John K. Conway
Counsel

RESPONDENT'S NAME: Lumbermens Mutual Casualty Company

ADDRESS: Legal Department, B-6

Long Grove, Illinois 60049

Attn: John K. Conway

HOME PHONE: N/A

BUSINESS PHONE: 312/540-3262

91040332035

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OFFICE OF THE GENERAL COUNSEL

LAW OFFICES

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FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

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BARNETT & ALAGIA

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1000 THOMAS JEFFERSON STREET, N.W.

WASHINGTON, D.C. 20007

(202) 342-0342

TELECOPIER (202) 775-9089

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OFFICES IN
ATLANTA, GEORGIA
FRANKFORT, KENTUCKY
LOUISVILLE, KENTUCKY
MIAMI, FLORIDA
NASHVILLE, TENNESSEE
NEW ALBANY, INDIANA
PALM BEACH, FLORIDA
BANGKOK, THAILAND

DANIEL J. SWILLINGER
PARTNER

September 21, 1988

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Suite 657
Washington, D.C. 20463

Re: MUR 2677

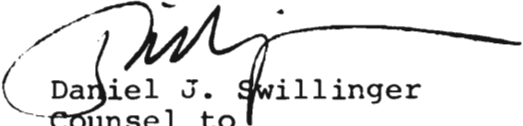
Dear Mr. Noble:

Enclosed is an original and three copies of the response of Lumbermens Mutual Casualty Company in the above-referenced matter.

Please contact me if you require additional information.

Sincerely,

BARNETT & ALAGIA


Daniel J. Swillinger
Counsel to
Lumbermens Mutual Casualty Company

DJS:mnd
Enclosures

91040332036

BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RE: MUR 2677

RESPONSE OF LUMBERMENS MUTUAL CASUALTY COMPANY

Now comes Lumbermens Mutual Casualty Company, through undersigned counsel, and responds to the Federal Election Commission's letter of August 31, 1988, received by the Company on September 6, 1988.

I. INTRODUCTION

The Lumbermens Mutual Casualty Company ("Lumbermens" or "Company") received from the Office of General Counsel on September 6, 1988 a letter transmitting a complaint filed by the National Republican Congressional Committee against Rosemary Pooler, a candidate for Congress from the 27th District of New York, her 1986 and 1988 principal campaign committees, Eagan Real Estate, Inc., and Lumbermens.

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The complaint alleges that Ms. Pooler and her committees received an illegal corporate contribution in the form of office space at a below-market-rate rental charge. The office building in question is owned by Lumbermens; Eagan Real Estate manages the building for the Company, and arranged for the Pooler occupancy.

As will be discussed in detail below, Lumbermens believes that the complaint is inaccurate in material respects, both as to the rental arrangement, and as to Lumbermens' responsibility for it.

The Company believes that no contribution occurred, because the rental arrangement was commercially reasonable, both as to the charges and the tenancy. The Company also believes that, while it is the owner of the building, Eagan made the agreement with Ms. Pooler on its own, and Eagan is solely responsible for the transaction, and, therefore, responsible for any corporate contribution should the Commission conclude that such resulted.

II. DISCUSSION

A. The Rental Arrangement Was in the Ordinary Course of Business

The central allegation here is that Ms. Pooler and her committees rented office space at a below market rate. Since the building is owned and managed by incorporated entities, such rate, if true, would constitute an illegal corporate contribution. 2 U.S.C. Sec. 441b(b)(2).

1. Factual Background

The Syracuse Building has approximately 96,000 usable square feet of office space, plus an additional 8,000 square feet of retail space. None of the space is occupied by Lumbermens, or its subsidiaries. Approximately 25% of the office space is currently vacant, which was also the situation at the time the arrangement was made with the Pooler committees.

The complaint is based on articles in the Syracuse Post-Standard which calculated that the Pooler committees paid a total of \$1,882.71 in rent over a 15-month period for a 506 square foot office. The newspaper somehow concluded that this resulted in a 23 cent/square foot charge.

Eagan Real Estate records show that the Pooler committees paid a total of \$2,038 in rent during the 15 months, which actually represents a payment of \$3.25/square foot. (See Exhibit A, letter to Nicholas Thachuk, September 16, 1988, ¶ 2.)

The article further alleges that the per square foot charge was substantially below the usual commercial rate for the building. This too is incorrect.

It is normal commercial practice for Eagan Real Estate to lease vacant, unimproved space at rates similar to that charged Pooler. Eagan Real Estate notes at least three such instances in the past two years. (Exhibit B, Memorandum from Eagan Real Estate, dated 9/12/88, ¶ 5.) These arrangements permit the building management to cover the \$1.90/square foot maintenance and utility cost, which it has to pay whether the space is occupied or not.

During 1987, the Pooler committees were on a week-to-week tenancy and agreed to pay janitorial and electrical costs.

Beginning January 1, 1988, the rent increased to \$250/month, and the tenancy became month-to-month. As noted in the letter to Mr. Thachuck (Exhibit A, ¶¶ 3 & 4), the premises were rented "as is," and were not improved during the Pooler tenancy. This represented a substantial saving to the management.

Finally, it should be noted that the space was carried as available for rental throughout the Pooler tenancy. (Exhibit A, ¶ 5.) It had been vacant for approximately two years prior to Pooler's occupancy, and it has remained vacant since she moved out at the end of March, 1988.

2. The Rental Meets Standard of "Ordinary Course of Business"

The Commission early on determined that a corporate contribution does not result if a corporation is acting in the ordinary course of business, even if it appears that a candidate receives certain value for goods or services. AO 1976-86 (CCH ¶ 5224) In that Opinion, the Commission found no corporate contribution existed, even though a billboard promoting the candidate was left up beyond the rental period, because the corporate owner did not deviate from its usual business practice.

In a more recent opinion relating to office space, the Commission concluded that as long as "the agreement with the Committee was in accord with the lessor's usual and normal charge and practice with respect to commercial leases," no corporate contribution results. AO 1982-4 (CCH ¶ 5671)

1. Factual Background

Eagan Real Estate, Inc. is acting as the leasing agent for the Syracuse Building under a 1983 agreement between Lumbermens and Eagan. (Exhibit C.)

Paragraph 1(b) of the Agreement provides that Eagan, on behalf of Lumbermens, is to "negotiate rentals and leases in the property." Paragraph 7 specifically reserves to the Company the right of final approval of all leases. The Pooler rental was negotiated by and agreed to by Eagan without the knowledge or approval of Lumbermens, a fact which Eagan freely admits. (Exhibit A, ¶ 6.) This is contrary to the agency agreement, as well as to Lumbermens' policy and practice.¹

2. Lumbermens Is Not Liable for the Acts of Eagan

Lumbermens and Eagan obviously had a principal-agent relationship, defined by the 1983 agreement. A principal is usually liable for the acts of an agent, but there are a variety of exceptions to this rule.

For example, it is well-established that a principal is not responsible for the acts of an agent when those acts were clearly inappropriate to, or unforeseeable in the accomplishment of, the authorized activities of the agent. Restatement (2nd) of Agency, Sec. 231.

¹ Ironically, the multi-candidate PAC of the Kemper Group, a subsidiary of Lumbermens, is in the process of making a contribution to Ms. Pooler's opponent; it may have been received by now.

This rental was made contrary to the agency agreement, and was inappropriate to the agent's authorized goal of renting space in the building. If Lumbermens, a sophisticated company, had known that a candidate for Federal office was a prospective tenant, it would have made absolutely certain that no questions existed as to a possible corporate contribution. It did not have that opportunity.

III. CONCLUSION

For the foregoing reasons, Lumbermens Mutual Casualty Company respectfully requests that the Commission take no further action on this matter as it relates to the Company, and dismiss the Company from this proceeding.

Respectfully submitted,

BARNETT & ALAGIA



Daniel J. Swillinger
Counsel to Lumbermens Mutual
Casualty Company

September 21, 1988

015DJS1.3D/ldw/lr

EAGAN*Real Estate, Inc.*

COMMERCIAL

RESIDENTIAL

MANAGEMENT

MORTGAGES

EXHIBIT A

SYRACUSE, NY 13202-2700
PHONE (315) 474-7411

September 16, 1988
"Our 69th Year"

Mr. Nicholas B. Tkachuk
Real Estate Officer
Lumbermens Mutual Casualty Co.
Kemper Insurance Building
Long Grove, IL 60049

Re: Rosemary Pooler

Dear Mr. Tkachuk:

I am writing to clarify the Rosemary Pooler occupancy of Office 202 in the Syracuse Building from January 1, 1987 to March 31, 1988.

Under oral agreement, Rosemary Pooler agreed to lease the premises known as Office 202 in the Syracuse Building on a week-to-week basis, with the understanding that she would pay for electrical and janitorial services for the year 1987. I may have mentioned to you that we had a tenant that would take Office 202 on a temporary basis, but no mention was made of the name of the tenant - Rosemary Pooler - or that she had been a candidate for Congress. Agreement was made commencing January 1, 1988 that Pooler would pay \$250 a month plus electricity for Office 202. Her occupancy was terminated as of March 31, 1988. During the total term of fifteen (15) months, Pooler paid a total of \$2,038 or \$136 per month. This amounts to \$3.25 per square foot or approximately \$1.40 above the services she was charged for.

Office 202 is a one-room office, 42' x 12', with no interior partitions. Pooler agreed to take the premises in an "as is" condition with no expenditure to the Landlord. This agreement represented a saving to the Landlord of \$10 to \$15 a square foot which would be normal tenant improvement cost, which is included in the base rate. The base rate at that time was \$12 per square foot.

In addition, if Office 202 was rented to a permanent tenant, it would have been necessary for the Landlord, at its own expense, to

Page 2 of 2
Tkachuk

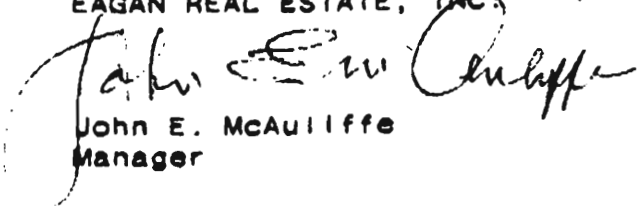
to remove partition and doorway that presently exists in the hallway outside the premises. (Office 202 is still vacant.)

At all times during Pooler's occupancy, Office 202 was carried on Eagan Real Estate's list of premises available for rental.

I want to emphasize that Lumbermens Mutual Casualty Company was not aware of or involved in negotiations concerning Pooler's tenancy and that her occupancy was the responsibility of Eagan Real Estate, Inc.

Very truly yours,

EAGAN REAL ESTATE, INC.


John E. McAuliffe
Manager

JEM/pl
Enc.

EXHIBIT B

MEMORANDUM

9/12/88

Fax #202-775-9089
Mr. Dan Swilling

RE: ROSEMARY POOLER

Under oral agreement, Rosemary Pooler agreed to lease the premises known as Office 202 in the Syracuse Building on a week-to-week basis, with the understanding that she would pay for electrical and janitorial services for the year 1987. Agreement was made commencing January 1, 1988 that Pooler would pay \$250 a month plus electricity for Office 202. Her occupancy was terminated as of March 31, 1988. During the total term of fifteen (15) months, Pooler paid a total of \$2,038 or \$136 per month. This amounts to \$3.25 per square foot or approximately \$1.40 above the services she was charged for.

Office 202 is a one-room office, 42' x 12', with no interior partitions. Pooler agreed to take the premises in an "as is" condition with no expenditure to the Landlord. This agreement represented a saving to the Landlord of \$10 to \$15 a square foot which would be normal tenant improvement cost, which is included in the base rate. The base rate at that time was \$12 per square foot.

In addition, if Office 202 was rented to a permanent tenant, it would have been necessary for the Landlord, at its own expense, to remove partition and doorway that presently exists in the hallway outside the premises. (Office 202 is still vacant.)

At all times during Pooler's occupancy, Office 202 was carried on Eagan Real Estate's list of premises available for rental.

At various times, vacant premises in the building have been leased at lower than market rental, to organizations other than for political activity, such as charitable or temporary business use. For example, from October 1987 through May of 1988, 3800 square feet on the third floor of the Syracuse Building was leased to Energy Controls at the rate of \$3.50 per square foot on a month-to-month basis. In 1988 1000 square feet was leased to M. Raftrey, who dealt in the sale of Waterford crystal for charitable purposes. At the present time, the National Multiple Sclerosis Society leases space in the building on a month-to-month basis at below the market rate.

During her occupancy, Pooler had only two (2) desks and a file cabinet in the office. It made no difference whether she was using 500 square feet or 2000 square feet.

EXHIBIT C

THIS AGREEMENT, made this 1st day of December 1983, between LUMBERMENS MUTUAL CASUALTY COMPANY of Long Grove, Illinois, hereinafter called "Owner" and EAGAN REAL ESTATE, INC. of Syracuse, New York, hereinafter referred to as "Agent".

WITNESSETH:

WHEREAS, "Owner" is the owner of The Syracuse Building, 224 Harrison Street, Syracuse, New York, hereinafter referred to as Property, located at the corner of Harrison Street and Harrison Place in Syracuse, New York, and desires to secure the services for the management of the property; and,

WHEREAS, "Agent" is desirous of assuming the management of the said Property.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) by each of the parties to the other in hand paid, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, it is mutually covenanted and agreed that:

1. The "Agent" as an independent contractor is hereby appointed manager of the property for the performance of the services hereinafter specified:
 - (a) Supervise the operation of the property.
 - (b) Negotiate rentals and leases in the property.
 - (c) Keep the property rented to suitable tenants.
 - (d) Collect rentals when due.
 - (e) Prosecute suits for rental and default, and for possession of the premises.
 - (f) Cause such incidental repairs and decorations to be made from time to time as may be necessary to maintain the property in good repair and condition.
 - (g) Purchase the supplies and materials necessary and requisite for the operation and maintenance of the property.
 - (h) Perform such other services pertaining to the management of the building as the "Owner" shall direct.
 - (i) Hire for the "Owner's" account all help employed therein and to supervise such help.
2. "Agent" shall not directly or indirectly receive or retain any profit or gain by reason of the management of the property other than is hereinafter provided.
3. "Agent" shall promptly notify "Owner" in writing of the receipt of any service of process, summons, tax bills, or other legal document of any governmental body or agency or person, and to deliver the same to "Owner" on request. Nothing herein provided, or in relationship established by this agreement, shall be construed to authorize the "Agent" to accept service of process on behalf of the "Owner".

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4. "Agent" shall keep accurate books and records of all monies received on account of rental and from all other sources pertinent to the property and for all disbursements thereof, and shall account to "Owner" from time to time as "Owner" may direct and shall deliver to "Owner" the said monies or part thereof from time to time as may be requested by "Owner", and shall keep at all times all money so received in a safe place and separate and apart from any other monies or funds.
 5. All books and records and all other paper, documents and correspondence shall be the property of the "Owner" and shall be kept in an orderly manner and in a safe place in the office of the "Agent" unless otherwise directed by the "Owner" and shall be available to the "Owner" at any time.
 6. "Agent", as requested, shall furnish a bond running to the "Owner", satisfactory in amount and form and substance to the "Owner" and issued in a company approved by the "Owner".
 7. All contracts or matters including, but not limited to leases or legal proceedings directly or indirectly pertaining to the property, its management or otherwise, shall at all times be subject to the final approval and instructions of the "Owner", it being specifically agreed that the "Owner" reserves this authority.
 8. As compensation, the "Agent" shall be paid five per cent (5%) of the gross revenue collected from the property during the term of this agreement, which five per cent (5%) shall be deducted by "Agent" from the monthly receipts collected.
 9. Except for all space which "Owner" or any affiliate or subsidiary of "Owner" may from time to time occupy in the conduct of its own business, "Agent" shall be paid a commission on all transactions affected by "Agent" at the rate of 5% of the total annual rental called for in the lease. "Agent" agrees to cooperate with other brokers in the leasing of space and "Agent" is responsible for arranging payment to other brokers within the limits of the 5% fee. "Agent" will be paid a commission upon the renewal of all transactions affected by "Agent" at the rate of 2½% of the total annual rental called for in the lease renewal.
 10. "Owner" agrees to indemnify and save "Agent" harmless, except in cases of willful misconduct or its own negligence, and that of its employees from all claims arising out of the course of its duties in connection with the leasing and management of the Building and from liability for injuries suffered by any employee or other person whomsoever while on the Building premises, and to carry at its own expense Comprehensive General Liability Insurance, with "Agent's" interests being fully insured, in amounts adequate to protect the interest of "Owner" and "Agent". "Owner" further agrees to reimburse "Agent" for court costs and other reasonable fees, including attorneys' fees, incurred by "Agent" in defending any action brought against "Agent" for injury or damage claimed to have

been suffered upon the building property. "Agent" shall not be liable for any error of judgment or for any mistake of fact or law, or for anything which it may do or refrain from doing in pursuance of its duties and activities hereunder, except in cases of willful misconduct or its own negligence and that of its employees.

11. This contract shall be effective as of December 1, 1983 and shall continue in full force and effect until November 30, 1984, and shall continue automatically thereafter for like periods unless either party shall notify the other of intention to cancel by giving sixty (60) days' written notice prior to the expiration of this agreement or any renewal thereof.
12. This agreement may be terminated at the option of the "Owner" upon thirty (30) days' notice to "Agent", in the event the present management of the "Agent" is changed.
13. Notices hereunder shall be written and shall be given by personal delivery to an officer of the other party hereto, or by depositing the notice in the United States Mail with postage prepaid and addressed to the "Owner" at Lumbermens Mutual Casualty Company, Long Grove, Illinois 60049, and to the "Agent" as Eagan Real Estate, Inc., One MONY Plaza, Syracuse, New York 13202 (if the name of the building is changed, then the name of the building as it is then known shall be used).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first above written.

Attest:

[Signature]
Real Estate Officer

LUMBERMENS MUTUAL CASUALTY
COMPANY

By *[Signature]*
Senior Vice President

Attest:

[Signature]

EAGAN REAL ESTATE, INC.

By *[Signature]*

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HANCOCK & ESTABROOK

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DAVID M. HADDOGE
W. CARROLL COYNE
DONALD P. MC CARTHY
PAUL M. MANRAHAN
EDWARD J. PFOHL
JOHN R. VARNEY
WILLIAM L. ALLEN, JR.
CHARLES H. UMBRECHT, JR.
DONALD J. KEMPLE
CARL W. PETERSON, JR.
BRUCE G. SODEN
CLARK A. FITCHER
JAMES R. MC VETY
ROBERT A. SMALL
JAMES P. BURNS, 3RD
WALTER L. MEAGHER, JR.
DONALD A. DENTON
DAVID W. LARRISON
ROBERT J. HUGHES, JR.
J. THOMAS BASSETT
RICHARD W. COOK
JOHN M. DE LANEY
DAVID S. HOWE
GREGORY R. THORNTON
E. PARKER BROWN, II
DOREEN A. SIMMONS
DAVID E. PEEBLES
JAMES E. SPARKES
JAMES J. CANFIELD
GERALD F. STACK
JAMES E. HUGHES
JEFFREY S. ANDRUS

COUNSELORS AT LAW
MONY TOWER I
P.O. BOX 4976
SYRACUSE, NEW YORK 13221-4976
TELEPHONE (315) 471-3151
TELECOPIER (315) 471-3157

125 WOLF ROAD
ALBANY, NEW YORK 12205
TELEPHONE (315) 486-7660

9 PAYNE STREET
HAMILTON, NEW YORK 13346
TELEPHONE (315) 624-1026

September 20, 1988

RAYMOND A. MUST
A. VAN W. HANCOCK
CHARLES H. BASSETT
DAVID T. SARVEY
COUNSEL

JANET D. CALLAHAN
THOMAS C. BUCKEL, JR.
MICHAEL L. CORP
DANIEL S. BERMAN
JOHN T. MC GANN
STEVEN R. SHAW
JOHN L. MURAD, JR.
KENNETH P. HOLDEN
STEPHEN A. DONATO
MARK J. SCHULTE
ALAN J. PIERCE
M. KATHLEEN LYNN
MARTHA L. BERRY
TODD P. HARRINGTON
R. JOHN CLARK
RENEE L. JAMES
SEVERLY A. LEWIS
DAVID S. LINGER
WINTHROP H. THURLOW
PATRICIA A. CROSBY
JOHN T. CASEY, JR.

*ALSO ADMITTED TO FLORIDA BAR
†RESIDENT ATTORNEY IN ALBANY
‡RESIDENT ATTORNEY IN HAMILTON

Lois G. Lerner, Esq.
Associates General Counsel
Federal Election Commission
Washington, DC 20463

Re: Eagan Real Estate
MNR 2677

Dear Ms. Lerner:

In response to your letter of August 31, 1988, enclosed please find Eagan Real Estate's Designation of Counsel statement.

I have reviewed the background of this matter with my clients, and find that the complaint filed by the National Republican Congressional Committee is exaggerated and, in any event, is unfounded to the extent any violation of 2 U.S.C. §441b(a) by Eagan Real Estate is inferred.

Eagan is the managing agent of Lumberman's Mutual Casualty Co., with respect to a building in Syracuse, New York known as the "Syracuse Building". Eagan, as managing agent, has wide discretion in the management and operation of the Syracuse Building, including the negotiation of leases and lease rates.

Pursuant to an oral agreement, Eagan agreed to lease Room 202 in the Syracuse Building to Rosemary Pooler on a week-to-week basis, commencing January 1, 1987. Under the terms of the oral agreement, Mrs. Pooler was obligated to pay the sum of \$250.00 per month, or \$3.25 per square foot, plus utilities. At that time, and at all times relevant herein, Eagan dealt with Mrs. Pooler in her individual capacity and believed that Mrs. Pooler was leasing the room in her individual capacity. In fact, Eagan and Mrs. Pooler negotiated for a permanent lease, for use in a prospective law practice then contemplated by Mrs.

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Lois G. Lerner, Esq.
September 20, 1988
Page 2

Pooler, but this permanent lease was never completed due to Mrs. Pooler's declaration of candidacy for Congress sometime after March, 1988.

Room 202 is a small, one room office with dimensions of approximately 42' X 12'. It has no interior partition. Mrs. Pooler leased this room "as is" with no tenant improvements. This agreement represented a savings to the landlord of \$10.00 to \$15.00 per square foot, which is the normal tenant improvement cost in the Syracuse Building. The standard base rent of \$12.00 per square foot charged in the Syracuse Building includes the recoupment of the landlord's tenant improvement costs of \$10.00 to \$15.00 per square foot.

At all times throughout Mrs. Pooler's occupancy, Room 202 was carried on Eagan Real Estate's list of premises available for rental. The room is poorly placed, small and difficult to market. Indeed, to this day it remains vacant, with no tenant prospects. If a permanent tenant is found, the landlord must incur additional expenses to remove a partition and doorway that presently exist outside the premises. When these expenses are added to the other tenant improvement expenses and overhead, it is unlikely that the landlord will make a profit in the rental of Room 202 during the first year of a permanent lease. On the other hand, the landlord made a profit of approximately \$1.40 per square foot during the term of Mrs. Pooler's lease.

It is a common practice of Eagan Real Estate to lease space in the Syracuse Building, particularly hard-to-market space such as that occupied by Mrs. Pooler, to various groups and individuals at "below market" rates. For example, from October, 1987 through May, 1988, 3800 square feet on the third floor of the Syracuse Building was leased to Energy Controls at the rate of \$3.50 per square foot on a month-to-month basis. In 1986 1000 square feet was leased to M. Raftrey, who dealt in the sale of Waterford crystal for charitable purposes. At the present time, the National Multiple Sclerosis Society leases space in the building on a month-to-month basis at below the market value.

At all times during Mrs. Pooler's occupancy, Eagan Real Estate was informed and believed that she was not a candidate for any office. Eagan had no intent to make a contribution to a candidate for public office, and did not believe that it was making a contribution.

For these reasons, Eagan submits that no action is

HANCOCK & ESTABROOK

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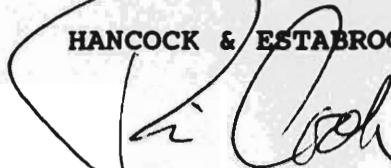
Lois G. Lerner, Esq.
September 20, 1988
Page 3

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warranted against it. If further information is requested,
please do not hesitate to contact the undersigned.

Very truly yours,

HANCOCK & ESTABROOK



Richard W. Cook

RWC/bjk

21040332102

OGC
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EPSTEIN BECKER & GREEN, P.C.

ATTORNEYS AT LAW

1140 19TH STREET, N.W.

WASHINGTON, D.C. 20036-6601†

(202) 861-0900

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TELECOPIER: (202) 296-2662

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250 PARK AVENUE
NEW YORK, NEW YORK 10177-0077†
(212) 351-4500

1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-2501
(213) 556-8861

SIX LANDMARK SQUARE
STAMFORD, CONNECTICUT 06901-2704†
(203) 348-3737

212 CARNEGIE CENTER
PRINCETON, NEW JERSEY 08540-6212
(609) 452-2445

† RC. NEW YORK, WASHINGTON, D.C.
CONNECTICUT, VIRGINIA AND
TEXAS ONLY

FOUR EMBARCADERO
SAN FRANCISCO, CALIFORNIA 94111-5954
(415) 398-3500

12201 MERIT DRIVE
DALLAS, TEXAS 75251-2213†
(214) 490-3143

ONE WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3412
(313) 965-3190

515 EAST PARK AVENUE
TALLAHASSEE, FLORIDA 32301-2524
(904) 881-0596

510 KING STREET, SUITE 301
ALEXANDRIA, VIRGINIA 22314-3132†
(703) 684-1204

September 23, 1988

HAND-DELIVERED

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

RE: MUR 2677

Dear Mr. Noble:

This letter constitutes the response of Friends of Rosemary Pooler and James M. Hanley, as Treasurer, ("Respondents"), to a complaint, MUR 2677, filed by the National Republican Congressional Committee ("NRCC") which alleges that Respondents may have violated the Federal Election Campaign Act of 1971, as amended ("the Act").

I. INTRODUCTION

The complaint alleges both that Respondents have violated the Act by accepting in-kind corporate contributions in the form of discounted rents and that Rosemary Pooler has converted campaign funds to personal use.^{1/} The NRCC bases its politically-motivated allegations on accounts presented by local Syracuse newspapers.

^{1/} The fact that these allegations are mutually exclusive does not deter the NRCC.

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Respondent will demonstrate that these press accounts do not accurately represent the actual arrangements entered into by Rosemary Pooler. Specifically, the newspaper accounts falsely assume that Respondent, not Rosemary Pooler, entered into the referenced rental agreements.

Therefore, Respondents request that the FEC take no action on this matter because Rosemary Pooler acted as a private citizen when she entered into the rental agreements which are the subject matter of this complaint. Further, any concomitant political use of the office space was paid for by Friends of Rosemary Pooler '88, the authorized campaign committee of Rosemary Pooler, in accordance with federal election law requirements.

In this complaint, the NRCC is essentially asking the FEC to deny a private citizen the opportunity to negotiate a reduced rent in an office building on an "as is" basis while deciding whether to seek employment in the private sector or to run for federal office. Then, once the private citizen decided to become a federal candidate, the NRCC requests that the FEC reprimand the candidate for having her campaign committee pay a pro-rated, fair-market value amount of rent for office space which was used, in minor part, to conduct campaign-related activity. Both of these meritless NRCC requests should be expeditiously dismissed.

II. FACTS

In 1986, Rosemary Pooler unsuccessfully challenged incumbent George Wortley in the 27th Congressional District of New York. Subsequent to this election, Rosemary Pooler entered into an oral agreement with Eagan Real Estate, Inc. ("Eagan") which managed an office building at 224 Harrison Street in Syracuse, New York. Under the terms of this agreement, Rosemary Pooler agreed to lease Office 202 on a week-to-week basis and to pay for electrical and janitorial services for the year 1987. Rosemary Pooler entered into this rental agreement at a time when she was no longer a candidate for federal office and continued under the terms of the oral agreement up to October 27, 1987, when she officially became a federal candidate.

After a difficult 1986 election campaign, Rosemary Pooler sought office space in downtown Syracuse as a base from which to explore professional options: she eventually obtained a job in Albany and was appointed a visiting professor at Syracuse University College of Law. Rosemary Pooler also spent time recovering from the demands of the previous election. Respondents do not deny that on occasion

Rosemary Pooler utilized the office space for political purposes; however, the space was leased not by the Friends of Rosemary Pooler, but by Rosemary Pooler personally for nonpolitical purposes.

Rosemary Pooler leased Office 202 on an "as is" basis. This arrangement served to the mutual benefit of both landlord and tenant. Eagan could not have rented the premises at a base rate of \$12 per square foot, the market value, without having done tenant improvements amounting to \$10 to \$15 per square foot. Eagan, therefore, did not have to do any internal repairs until a permanent tenant was found. Since Rosemary Pooler was to pay for the utilities, Eagan did not suffer any losses by renting to Rosemary Pooler.

At all relevant times in 1987 and 1988, Eagan listed the premises for rental. Since Rosemary Pooler's lease was on a week-to-week basis, she would have had to evacuate the premises immediately, if a permanent tenant was found. As of September 12, 1988, Office 202 has not been rented.

When Rosemary Pooler officially became a candidate on October 27, 1987, she began paying \$150.00 per month until the end of the year. This new agreement was voluntarily initiated by Rosemary Pooler. Beginning on January 1, 1988, a new agreement was again negotiated between Rosemary Pooler and Eagan whereby Eagan agreed to give 30 days notice in exchange for a rent of \$250.00 per month plus electricity. Rosemary Pooler terminated her occupancy on March 31, 1988.

III. DISCUSSION

Rosemary Pooler entered into an oral agreement to lease unfurnished and unimproved office space as a private citizen between her 1986 and 1988 campaigns. During this period, she was free to enter into such agreements which concerned her present personal and professional goals and had no bearing on any past or future political activities. As these arrangements were not made by, or for the benefit of, either her 1986 or 1988 campaigns, Rosemary Pooler could not have accepted illegal corporate contributions or converted campaign funds for personal use.

After the 1986 election, Rosemary Pooler remained a public figure in Syracuse. It was, therefore, not unlikely that she would occasionally engage in political activity and might also choose to again seek federal office in 1988. Nonetheless, it would be grossly unfair to require, as the NRCC suggests, that the mere likelihood

that a former candidate will again seek federal office precludes the individual from entering into agreements as a private citizen -- for personal and professional purposes -- because such agreements automatically encompass political activities of a yet unannounced campaign or a former campaign. Under such an interpretation, almost any activity of a public individual such as Rosemary Pooler would be subject to the scrutiny of the FEC and unsubstantiated and politically-motivated charges from the NRCC.

Respondents do not contend that Rosemary Pooler totally disengaged herself from politics for the period of January 1, 1987 to October 27, 1988, nor should they be required to do so: such a bright line distinction between public and private life would be rare. However, Rosemary Pooler's primary focus was nonpolitical and access to office space in Syracuse facilitated her ability to pursue her nonpolitical interests.

To the extent that Rosemary Pooler used the office space in questions for political purposes, her 1988 campaign committee paid Eagan and reported such expenses on its FEC reports. The amount of the utilities and janitorial services constituted a fair market valuation of actual political activity prior to October 23, 1987. Therefore, Friends of Rosemary Pooler '88 paid for these services. In accordance with her continuing good faith efforts to report any political activity in this office, Rosemary Pooler acted responsibly and further modified her rental agreement subsequent to her announcement to again run for federal office. The increase in rent paid to Eagan, which was also paid by Friends of Rosemary Pooler '88, reflected an increase in the valuation of the political activity.

Finally, the NRCC alleges that by renting the office space at below fair market value, Respondent accepted illegal in-kind corporate contributions. Respondents contend that Rosemary Pooler did not rent at below the fair market value of the actual space utilized. As mentioned previously, Eagan could not have leased space to a permanent tenant at the market value of \$12 per square foot without undertaking normal tenant improvement costs. Both parties benefitted from an agreement which contained significant tradeoffs: Rosemary Pooler received a reduced rent for unimproved, austere conditions with a promise of only one week's notice prior to termination while Eagan continued seeking to lease office space, which is still vacant today, and neither suffered any financial losses nor expended any money to improve the office space.

Lawrence M. Noble, Esquire
September 23, 1988
Page 5

IV. CONCLUSION

For the foregoing reasons, Respondents request that the Commission take no further action in connection with this matter.

Respectfully Submitted,

By:



Leslie J. Kerman
1140 19th Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 861-1877

Attorney for Friends of Rosemary
Pooler and James M. Hanley as
Treasurer

21040332107

ATTENTION: KEITH MORGAN

STATEMENT OF DESIGNATION OF COUNSEL

06C 1432

MUR

2677

NAME OF COUNSEL:

Leslie J. Kerman

ADDRESS:

Epstein, Becker & Green

1140 19th Street, N.W., Suite 900

Washington, D.C. 20036

TELEPHONE:

(202) 861-0900

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

September 6, 1988

Date

Rosemary S. Pooler
Signature

RESPONDENT'S NAME:

Rosemary S. Pooler

ADDRESS:

P. O. Box 1062

Syracuse, New York 13201

HOME PHONE:

(315) 446-3864

BUSINESS PHONE:

(315) 476-1988

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R. John Stanton, Jr.

5410 West Loop South
Bellaire, Texas 77401
(713) 666-7522

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ADMINISTRATIVE DIVISION
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BY FEDERAL EXPRESS

February 7, 1989

Ms. Judybeth Greene
Federal Election Commission
999 E Street NW
Washington, D.C. 20463

Re: MUR - 2677

Dear Ms. Greene:

I hereby designate Mr. Thomas P. Marinis, Jr. as my counsel. He is authorized to receive any notifications or other communications from the Commission and to act on my behalf before the Commission. Mr. Marinis is associated with the firm of Vinson & Elkins, 3400 First City Tower, 1001 Fannin, Houston, Texas 77002. His telephone number is (713) 651-2462.

I would like to request an additional extension of the date by which I must respond to the Commission from February 13 to Monday, February 20, 1989. Mr. Marinis assured me that he had spoken to you about an extension of one week.

Thank you very much for your consideration; if you have any questions about these arrangements, please do not hesitate to call.

Sincerely,

John Stanton

89 FEB -8 PM 2:43

FEDERAL ELECTION COMMISSION

999 B Street, N.W. 20463
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 2677

DATE COMPLAINT RECEIVED **EXECUTIVE SESSION**

BY OGC: 8-24-88

DATE OF NOTIFICATION TO

RESPONDENTS: 8-31-88

STAFF MEMBER: Keith V. Morgan

APR 18 1989

COMPLAINANT: National Republican Congressional Committee
Joseph Gaylord, Executive Director

RESPONDENTS: Rosemary Pooler
Friends of Rosemary Pooler and James M. Hanley,
as Treasurer
Friends of Rosemary Pooler '88 and James M.
Hanley, as Treasurer
Eagan Real Estate Co.
Lumbermens Mutual Casualty Co.

RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 439a
11 C.F.R. § 100.7(a)(1)(iii)(A)

INTERNAL REPORTS CHECKED: Public Disclosure Reports
Advisory Opinions

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter originated from a duly sworn and notarized complaint filed with the Commission on August 24, 1988 by the National Republican Congressional Committee ("NRCC"), Joseph Gaylord, Executive Director.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The NRCC alleges in its complaint that Rosemary Pooler (a

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Democratic candidate for New York's 27th Congressional District in 1986 and 1988) and her 1986 and 1988 principal campaign committees (Friends of Rosemary Pooler and Friends of Rosemary Pooler '88), violated 2 U.S.C. § 441b(a) by receiving an in-kind corporate contribution. The contribution is alleged to have been through an office leasing arrangement in which office space was made available to the Pooler campaign from November 1986 to March 1988 at a price below the market rental rate. Lumbermens Mutual Casualty Co., an Illinois corporation and owner of the building, and the Eagan Real Estate Co., a New York corporation which was the leasing agent for the building, are also alleged to have violated section 441b(a) by making an in-kind corporate contribution. In addition, the complaint alleges that Rosemary Pooler converted campaign funds to her personal use in violation of 2 U.S.C. § 439a.

Ms. Pooler began using office space in the Syracuse Building in November 1986, after her unsuccessful bid that year for a seat in Congress. She entered into an oral agreement to lease the office space from the Eagan Real Estate Co. The agreement required that she only pay for utilities and janitorial services. She reached another oral agreement with Eagan in October 1987, and agreed to pay \$150 per month for the office. In January 1988 she agreed in writing to a month-to-month lease and to pay \$250 for the office space plus the telephone and electric bills. Irregular rent payments were made by Friends of Rosemary Pooler

and Friends of Rosemary Pooler '88 ("the Pooler Committees") to the Eagan Real Estate Co.^{1/}

Counsel representing Eagan Real Estate and counsel representing Lumbermens Mutual Casualty have each filed responses to the complaint, in which they deny that their clients have violated the Act and dispute some of the factual allegations in the complaint. Lumbermens and Eagan deny that they gave the Pooler campaign any special leasing arrangement. Lumbermens alternatively contends that it should not be responsible for the actions of Eagan because Eagan acted outside the scope of its agency agreement with Lumbermens. Counsel for Rosemary Pooler and the Pooler Committees has also responded to this complaint by stating in part that Rosemary Pooler rented the office space as a private citizen, not as a federal candidate. Counsel admits that

^{1/} According to the public record, the Pooler Committees made the following payments to Eagan Real Estate. Unless otherwise noted each payment was designated as rent on the disclosure reports:

Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee)

June 11, 1987 -	\$497.89
August 19, 1987 -	21.75
November 14, 1987 -	253.07
Total	<u>\$772.71</u>

Friends of Rosemary Pooler '88 (Pooler's 1988 principal campaign committee)

December 28, 1987 -	\$300.00
March 1, 1988 -(designated for electric charges for July 1987 through February 1988)	173.72
March 15, 1988 -	750.00
May 2, 1988 -(designated for electric charges for February and March 1988)	<u>41.13</u>
Total	\$1264.85

Total for both committees: \$2037.56

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Pooler used the office space for campaign related activity, but claims that the rent the Pooler Committees paid represented the fair pro rata amount in rent for their political activity in the office space.

B. Legal Analysis

1. In-kind Corporate Contribution

Corporations are prohibited from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a). Contributions are defined to include "anything of value." 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions of goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). An in-kind contribution occurs when "goods or services [are provided to a candidate] without charge or at a charge that is less than the usual and normal charge for such goods and services." Id. A discounted rate for goods and services may be considered a usual and normal charge if the goods and services are routinely offered at that rate in the ordinary course of the vendor's business to both political and nonpolitical groups. See AOs 1985-28; 1982-30.

Eagan and Lumbermens are both corporations and as such are not allowed to contribute anything of value to a Federal campaign. The complaint alleges that both corporations made an in-kind corporate contribution to the Pooler campaign. The complaint contends that the rent charged by Eagan, the agent for the building, and Lumbermens, the owner of the building, to Rosemary Pooler for the office space was below the usual and normal rent charged other tenants. As a basis for its complaint,

the complainant relies on several attached newspaper articles. One of the articles states, in part, that "Rosemary Pooler launched her second bid for Congress last year in downtown office space for which she signed no lease, made no rent payments in the first seven months she was in the building and eventually paid far less than the rate charged other tenants on the same floor." According to the article, Eagan charged other tenants in the building \$10 to \$12 per square foot for office space similar to that occupied by Pooler. The complaint alleges that the Pooler Committees paid about \$.23 per square foot for the office space.^{2/} Thus, it is alleged that the difference between the usual and normal charge (i.e., \$10 to \$12 per square foot) and what was actually paid by Pooler and her Committees (i.e., \$.23 per square foot) represents an in-kind corporate contribution to Pooler and the Committees under the Act.

In its response Lumbermens denies that it made an illegal corporate contribution to the Pooler campaign (Attachment 1). Lumbermens states that Pooler rented the premises "as is," and on a week-to-week basis. This arrangement meant that the office space was not improved by Eagan before Pooler moved in, and that Pooler would have had to vacate the office with only a week's

^{2/} The article goes on to state that according to FEC records, the Pooler Committees paid a total of \$1,822.71 for 16 1/2 month's rent on the 504 square foot office, including a check for \$750 paid a few days before she moved to a new headquarters. The public record actually shows that Pooler's Committees paid \$2,037.56, which does include a \$750 check paid on March 15, 1988. According to the article, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor as Pooler, has a yearly lease to pay \$9,000 for 900 square feet. (Syracuse Post-Standard, August 19, 1988).

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notice if another tenant was found. Lumbermens states that the office space was listed as available the entire time Pooler was there. The respondent contends that this rental arrangement was in the ordinary course of business, and Pooler paid the normal and usual rental rate considering the circumstances surrounding her rental.^{3/} Respondent Lumbermens concludes that Pooler's leasing arrangement was no violation of the Act, since it was the normal and usual practice for Eagan to lease vacant, unimproved space at rates similar to that charged Pooler.^{4/}

Lumbermens also claims that it is not liable for the acts of Eagan. The respondent argues that Eagan Real Estate manages the building and arranged for the Pooler occupancy, and therefore, should be responsible for any violations of the Act that might result from her occupancy. Lumbermens admits that it has a principal-agent relationship with Eagan, as defined by a 1983 agency agreement that is attached to Lumbermens' response. However, Lumbermens argues that the rental was contrary to the agency agreement and was inappropriate to the agent's authorized goal of renting space in the building. Lumbermens claims that if it had known that a Federal candidate was a prospective tenant,

^{3/} According to responses filed by Lumbermens and Eagan, the Pooler Committees paid a total of \$2,038 in rent during 15 months. This figure is supported by the public record. According to the responses this represents \$3.25/square foot. In contrast, the complainant alleged that the Pooler Committees paid \$1,882.71 in rent over 16 1/2 months amounting to only \$.23 per square foot. The complainant bases its rent calculations on the article in the August 19, 1988, Syracuse Post-Standard.

^{4/} Lumbermens points to three other examples where Eagan assertedly leased unimproved office space to nonpolitical groups below the market rate (Attachment 1, pp. 3,10), but fails to describe the rate charged for two of the three instances cited.

it would have made absolutely certain that no questions existed as to a possible corporate contribution.

Eagan Real Estate also denies in its response that it made an illegal in-kind corporate contribution to the Pooler campaign. (Attachment 2). Eagan argues that the rental arrangement was in the ordinary course of business based on the conditions of the rental outlined in Lumbermen's response. Eagan also contends that its arrangement with Pooler was not subject to the jurisdiction of the Act, because it was not renting to her as a federal candidate. Eagan claims that it had no intent to make a contribution to a candidate for public office, and did not believe it was making a contribution when it agreed to allow Pooler to use the office space.

Key in assessing the supposed violations of section 441b is determining the "usual and normal" rate for office space in the respondent's building. Despite respondents' claims that the rental agreement with Pooler was normal and usual, the fact remains that Pooler appears to have paid significantly less rent than other tenants in the building, evidencing a rental charge for the premises at less than the usual and normal rate. Furthermore, there is reason to doubt Eagan's claim of no political purpose in the lease to Pooler.

The property manager of the building, John McAuliffe, employed by Eagan, knew Pooler was a federal candidate in 1986, and he was apparently aware of campaign activity taking place in the building. McAuliffe is quoted as saying "[w]e often rent

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spaces out for political purposes. You rent them out either as a contribution or minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post-Standard, August 19, 1988. Moreover, according to the public record, Eagan received rent checks from both of Pooler's campaign committees. As the owner of the building, respondent Lumbermens is legally responsible for the activity of its agent, Eagan. Further, the agency agreement between Eagan and Lumbermens provides Eagan with compensation based on the gross revenue collected from the property during the agreement. Because respondent Eagan set the rent for the building and had a financial interest in the office space through the agency agreement, it too is responsible for the apparently below market rent charged Pooler and her campaign committees. Therefore, the Office of the General Counsel recommends the Commission find reason to believe that both the Lumbermens Mutual Casualty Co. and the Eagan Real Estate Co. violated 2 U.S.C. § 441b(a), by making an in-kind corporate contribution to the Pooler campaign.

Section 441b(a) also prohibits federal candidates and political committees from knowingly accepting or receiving any contributions from corporations. The public disclosure reports indicate that Pooler's '86 Committee and her '88 Committee paid rent to Eagan for the office space. The complaint alleges that since the Pooler campaign paid discounted rent, Pooler and her campaign committees knowingly accepted an illegal in-kind

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corporate contribution from Eagan and Lumbermens.

In its response counsel for Pooler and her committees states that Eagan Real Estate entered into an oral rental agreement with Ms. Pooler not her campaign committee. (Attachment 3). The Pooler response states that Pooler rented the office to launch a search for a nonpolitical job --not to run for Congress. The Pooler response maintains that the amount the Pooler campaign committees paid Eagan in rent merely represented the fair valuation of their political activity in the office space. After Pooler declared her candidacy on October 27, 1987, counsel for Pooler claims that the Pooler Committees paid more rent to reflect the increase in political activity in the office space. Pooler and her Committees assert that they paid the fair amount in rent, and that they did not receive a campaign contribution through the rental arrangement.

The respondents do not deny that Pooler used the office space for campaign activities. In press accounts, she is reported to have admitted that she used the office space to store campaign materials from her 1986 campaign, and to fundraise in connection with her 1986 campaign debt and her 1988 candidacy. The press accounts also indicate that the office space served as her campaign headquarters for the first five months of her announced 1988 campaign for Congress. Despite Pooler's claim that she rented the office space as a private citizen, it appears from McAuliffe's reported statement that the office space was

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actually offered by Eagan and rented by Pooler for political purposes. Based upon the acceptance of the apparently discounted rent by Rosemary Pooler and the Pooler campaigns, the Office of the General Counsel recommends that the Commission find reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 violated 2 U.S.C. § 441b(a).

2. Conversion of campaign funds to personal use

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The Act allows federal candidates to use excess campaign funds for any lawful purpose, but, with certain exceptions inapplicable here, prohibits such candidates from converting excess campaign funds to personal use. 2 U.S.C. § 439a. The complaint alleges that Pooler used the office space for personal purposes -- specifically to find a nonpolitical job after her 1986 election defeat -- and therefore that such use of a campaign resource represents an illegal conversion of campaign funds by Pooler in violation of 2 U.S.C. § 439a. In her response Pooler argues that the rental was not a campaign contribution in the first place, and therefore, she never converted campaign funds to personal use. According to the public record, however, Pooler's campaign committees paid rent for the office space with campaign funds.

Although the Commission has never found that a candidate's incidental personal use of campaign resources could violate section 439a, the provision would appear to bar the complete conversion of a campaign resource to a candidate's personal use.

While this Office has prepared questions to determine how Ms. Pooler in fact used the office space, we do not recommend a Commission finding on this personal use provision at this time. Accordingly, the Office of the General Counsel recommends that the Commission take no action at this time regarding the allegation that Rosemary Pooler violated 2 U.S.C. § 439a.

Questions and document requests have been prepared for all respondents. This Office further recommends the Commission approve a subpoena for deposition addressed to John McAuliffe, for use if necessary after responses to the questions and document requests have been received.

III. RECOMMENDATIONS

1. Find reason to believe Rosemary Pooler violated 2 U.S.C. § 441b(a).
2. Take no action at this time regarding the allegation that Rosemary Pooler violated 2 U.S.C. § 439a.
3. Find reason to believe Friends of Rosemary Pooler and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a).
4. Find reason to believe Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a).
5. Find reason to believe Eagan Real Estate Co. violated 2 U.S.C. § 441b(a).
6. Find reason to believe Lumbermens Mutual Casualty Co. violated 2 U.S.C. § 441b(a).

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7. Approve the attached letters, factual and legal analyses, questions, requests for the production of documents, and subpoena for deposition.

Lawrence M. Noble
General Counsel

March 30, 1989 By: George F. Riskel
Date George F. Riskel
Acting Associate General
Counsel

Attachments

1. Response of Lumbermens Mutual Casualty Co.
2. Response of the Eagan Real Estate Co.
3. Response of Rosemary Pooler
4. Proposed Letters (3)
5. Factual and Legal Analyses (3)
6. Questions, Requests for the Production of Documents and Subpoena for Deposition.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Rosemary Pooler)
Friends of Rosemary Pooler and)
James M. Hanley, as Treasurer)
Friends of Rosemary Pooler '88) MUR 2677
and James M. Hanley, as)
Treasurer)
Eagan Real Estate Co.)
Lumbermens Mutual Casualty Co.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 18, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2677:

1. Find reason to believe Rosemary Pooler violated 2 U.S.C. § 441b(a).
2. Take no action at this time regarding the allegation that Rosemary Pooler violated 2 U.S.C. § 439a.
3. Find reason to believe Friends of Rosemary Pooler and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a).
4. Find reason to believe Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a).
5. Find reason to believe Eagan Real Estate Co. violated 2 U.S.C. § 441b(a).

(continued)

Federal Election Commission
Certification for MUR 2677
April 18, 1989

Page 2

6. Find reason to believe Lumbermens Mutual Casualty Co. violated 2 U.S.C. § 441b(a).
7. Approve the letters, factual and legal analyses, questions, requests for the production of documents, and subpoena for deposition as recommended in the General Counsel's report dated March 30, 1989, subject to the revisions agreed upon during the meeting discussion.

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

Attest:

4-19-89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1989

Leslie J. Kerman, Esquire
Epstein, Becker & Green, P.C.
1140 19th Street, N.W.
Suite 900
Washington, D.C. 20036

RE: MUR 2677
Rosemary Pooler
Friends of Rosemary Pooler and
James M. Hanley, as treasurer,
Friends of Rosemary Pooler '88
and James M. Hanley, as treasurer

Dear Ms. Kerman:

On August 31, 1988, the Federal Election Commission notified your clients, Rosemary Pooler, Friends of Rosemary Pooler, Friends of Rosemary Pooler '88 (the "Committees") and James M. Hanley, the treasurer of both Committees, 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 you, the Commission, on April 18, 1989, found that there is reason to believe your clients Rosemary Pooler, the Committees, and James M. Hanley, as treasurer of both Committees, violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

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 within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

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Leslie J. Kerman
Page 2

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.

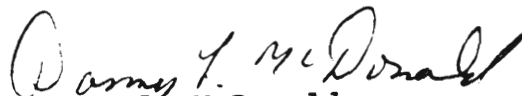
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending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

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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 Keith V. Morgan, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Questions
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 2677

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Rosemary Pooler
c/o Leslie J. Kerman, Esq.
Epstein, Becker & Green, P.C.
1140 19th Street, N.W.
Washington, D.C. 20036

21040832126

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 fifteen (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.

Rosemary Pooler

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.

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DEFINITIONS

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

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the number of pages comprising the document, and the source or author of the document.

"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.

"Office space" shall mean the office space in the Syracuse Building rented by Rosemary Pooler from November 1986 to March 1988.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2677

Questions and Request for the Production of Documents to Rosemary Pooler regarding office space rented in the Syracuse Building from November 1986 to March 1988.

Questions and Request for the Production of Documents

1. State the total amount in expenditures you made in connection with the office space:
 - a. State how each expenditure related to the office space.
 - b. Provide dates for each expenditure.
 - c. Identify all documents that relate to each expenditure, including cancelled checks.
2. State your relationship with the Eagan Real Estate Co. and/or its officers, directors, agents or employees:
 - a. Identify all documents relating to any relationship between you and Eagan Real Estate.
 - b. Identify any leases signed by you with Eagan Real Estate for the office space.
3. State what your relationship is or was with John McAuliffe, the property manager for Eagan Real Estate. Identify all documents relating to any relationship between you and Mr. McAuliffe.
4. State your relationship with the Lumbermens Mutual Casualty Co. and any of its officers, directors, agents or employees. Identify all documents relating to any relationship between you and anyone associated with the Lumbermens Mutual Casualty Co.
5. Regarding the use of the office space:
 - a. Specify the political and non-political activities that took place in the office space. Provide dates for each activity.
 - b. Identify any documents that relate or refer to your use of the office space.
6. Please provide each and every document that concerns the above including, but not limited to those identified.

21040332129

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

) MUR 2677
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**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: James M. Hanley, treasurer
Friends of Rosemary Pooler and
Friends of Rosemary Pooler '88
c/o Leslie J. Kerman, Esq.
Epstein, Becker & Green, P.C.
1140 19th Street, N.W.
Washington, D.C. 20036

91040332130

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James M. Hanley, Treasurer

INSTRUCTIONS

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"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2677

Questions and Request for the Production of Documents to James M. Hanley, as treasurer of Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 regarding office space rented at the Syracuse Building from November 1986 to March 1988.

Questions and Request for the Production of Documents

1. State the total amount in expenditures you made in connection with the office space:
 - a. State how each expenditure related to the office space.
 - b. Provide dates for each expenditure.
 - c. Identify all documents that relate to each expenditure.
2. State your relationship with the Eagan Real Estate Co. and any of its officers, directors, agents or employees. Identify all documents relating to any relationship between you and anyone associated with Eagan Real Estate.
3. State your relationship with the Lumbermens Mutual Casualty Co. and any of its officers, directors, agents or employees. Identify all documents relating to any relationship between you and anyone associated with the Lumbermens Mutual Casualty Co.
4. Identify all officers, directors, employees, staff members and other persons affiliated with your committees who are in any way associated with the Eagan Real Estate Co. or Lumbermens Mutual Casualty Co. or any of their officers, directors, agents or employees.
5. Please provide each and every document that concerns the above, including but not limited to those identified in response to the above questions.

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Rosemary Pooler
Friends of Rosemary Pooler
and James Hanley, as treasurer
Friends of Rosemary Pooler '88
and James Hanley, as treasurer

MUR: 2677

I. FACTUAL BACKGROUND

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This matter originated from a duly sworn and notarized complaint filed with the Commission on August 24, 1988 by the National Republican Congressional Committee ("NRCC"), Joseph Gaylord, Executive Director. The NRCC alleges in its complaint that Rosemary Pooler (a Democratic candidate for New York's 27th Congressional District in 1986 and 1988) and her 1986 and 1988 principal campaign committees (Friends of Rosemary Pooler and Friends of Rosemary Pooler '88), violated 2 U.S.C. § 441b(a) by receiving an in-kind corporate contribution. The contribution is alleged to have been through an office leasing arrangement in which office space was made available to the Pooler campaign from November 1986 to March 1988 at a price below the market rental rate. Lumbermens Mutual Casualty Co., an Illinois corporation is the owner of the building, and the Eagan Real Estate Co., a New York corporation is the leasing agent for the building.

Ms. Pooler began using office space in the Syracuse Building in November 1986, after her unsuccessful bid that year for a seat in Congress. She entered into an oral agreement to lease the office space from the Eagan Real Estate Co. The agreement required that she only pay for utilities and the janitorial services. She reached another oral agreement with Eagan in

October 1987, and agreed to pay \$150 per month for the office. In January 1988 she agreed in writing to a month-to-month lease and to pay \$250 for the office space plus the telephone and electric bills. Irregular rent payments were made by Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 (the "Pooler Committees") to the Eagan Real Estate Co.^{1/}

Counsel for Rosemary Pooler and the Pooler Committees has responded to this complaint by stating in part that Rosemary Pooler rented the office space as a private citizen, not as a Federal candidate. Counsel admits that Pooler used the office space for campaign related activity, but claims that the rent the Pooler Committees paid represented the fair pro rata amount in rent for their political activity in the office space.

^{1/} According to the public record, the Pooler Committees made the following payments to Eagan Real Estate. Unless otherwise noted each payment was designated as rent on the disclosure reports:

Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee)

June 11, 1987 -	\$497.89
August 19, 1987 -	21.75
November 14, 1987 -	<u>253.07</u>
Total	\$772.71

Friends of Rosemary Pooler '88 (Pooler's 1988 principal campaign committee)

December 28, 1987 -	\$300.00
March 1, 1988 -(designated for electric charges for July 1987 through February 1988)	173.72
March 15, 1988 -	750.00
May 2, 1988 -(designated for electric charges for February and March 1988)	<u>41.13</u>
Total	\$1264.85

Total for both committees: \$2037.56

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As a basis for its complaint, the complainant relies on several attached newspaper articles. One of the articles states, in part, that "Rosemary Pooler launched her second bid for Congress last year in downtown office space for which she signed no lease, made no rent payments in the first seven months she was in the building and eventually paid far less than the rate charged other tenants on the same floor." According to the article, Eagan charged other tenants in the building \$10 to \$12 per square foot for office space similar to that occupied by Pooler. The complaint alleges that Pooler and her Committees paid about \$.23 per square foot for the office space.^{2/} Thus, it is alleged that the difference between the usual and normal charge (i.e., \$10 to \$12 per square foot) and what was actually paid by Pooler and her Committees (i.e., \$.23 per square foot) represents an in-kind corporate contribution to Pooler under the Act.

II. LEGAL ANALYSIS

Corporations are prohibited from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a). Contributions are defined to include "anything of value." 2 U.S.C. § 431(8)(A)(i). The term "anything of value"

^{2/} The article goes on to state that according to FEC records, the Pooler Committees paid a total of \$1,822.71 for 16 1/2 month's rent on the 504 square foot office, including a check for \$750 paid a few days before she moved to a new headquarters. The public record actually shows that the Pooler Committees paid \$2,037.56, which does include a \$750 check paid on March 15, 1988. According to the article, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor as Pooler, has a yearly lease to pay \$9,000 for 900 square feet. (Syracuse Post-Standard, August 19, 1988).

includes in-kind contributions of goods or services. 11 C.F.R. S 100.7(a)(1)(iii)(A). An in-kind contribution occurs when "goods or services [are provided to a candidate] without charge or at a charge that is less than the usual and normal charge for such goods and services." Id. A discounted rate for goods and services may be considered a usual and normal charge if the goods and services are routinely offered at that rate in the ordinary course of the vendor's business to both political and nonpolitical groups. See AOs 1985-28; 1982-30.

Section 441b(a) also prohibits federal candidates and political committees from knowingly accepting or receiving any contributions from corporations. The public disclosure reports indicate that the Pooler Committees paid rent to Eagan for the office space. The complaint alleges that since the Pooler campaign paid discounted rent, Pooler and her Committees knowingly accepted an illegal in-kind corporate contribution from Eagan and Lumbermens.

In her response, counsel for Pooler and her Committees states that Eagan Real Estate entered into an oral rental agreement with Ms. Pooler not her Committees. The Pooler response asserts that Pooler rented the office to launch a search for a nonpolitical job -- not to run for Congress. The Pooler response maintains that the amount the Pooler Committees paid Eagan in rent merely represented the fair valuation of their political activity in the office space. After Pooler declared her candidacy on October 27, 1987, counsel for Pooler claims that the Pooler Committees paid more rent to reflect the increase in

political activity in the office space. Pooler and her Committees assert that they paid the fair amount in rent, and that they did not receive a campaign contribution through the rental arrangement.

The respondents do not deny that Pooler used the office space for campaign activities. In press accounts, she is reported to have admitted that she used the office space to store campaign materials from her 1986 campaign, and to fundraise in connection with her 1986 campaign debt and her 1988 candidacy. The press accounts also indicate that the office space served as her campaign headquarters for the first five months of her announced 1988 campaign for Congress. The property manager of the building, John McAuliffe, employed by Eagan, knew Pooler was a Federal candidate in 1986, and he was apparently aware of campaign activity taking place in the building. McAuliffe is quoted as saying "[w]e often rent spaces out for political purposes. You rent them out either as a contribution or minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post-Standard, August 19, 1988. Despite Pooler's claim that she rented the office space as a private citizen, based on McAuliffe's reported statement and the fact that rent payments were made by her campaign committees it appears that the office space was actually offered by Eagan and rented by Pooler for political purposes. It also appears from the complaint and accompanying newspaper articles that the Pooler Committees paid substantially less in rent than other tenants in the Syracuse Building with similar office space. Therefore, there is

reason to believe that Rosemary Pooler, Friends of Rosemary Pooler, Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer of both committees violated 2 U.S.C. § 441b(a).

21040332139



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1989

Daniel J. Swillinger, Esq.
Barnett & Alagia
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

RE: MUR 2677
Lumbermens Mutual Casualty Co.

Dear Mr. Swillinger:

On August 31, 1988, the Federal Election Commission notified your client, the Lumbermens Mutual Casualty Co., 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 client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 18 1989, found that there is reason to believe Lumbermens Mutual Casualty Co. violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Lumbermens. 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 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 Lumbermens, 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

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Daniel J. Swillinger, Esq.
Page 2

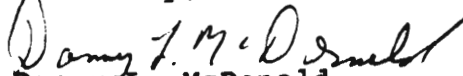
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Sincerely,


Danny L. McDonald
Chairman

Enclosures
Questions
Factual and Legal Analysis

1104032141

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 2677

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Lumbermens Mutual Casualty Co.
c/o Daniel J. Swillinger
Barnett & Alagia
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

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Lumbermens Mutual Casualty Co.

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21040332143

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"Office space" shall mean the office space in the Syracuse Building rented by Rosemary Pooler from November 1986 to March 1988.

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2677

Questions and Request for the Production of Documents to
Lumbermens Mutual Casualty Co. regarding office space in the
Syracuse Building rented by Rosemary Pooler from November 1986 to
March 1988.

Questions and Request for the Production of Documents

1. Did you enter into a lease in connection with the office space?
If yes,
 - a. What were the terms of the lease?
 - b. If the lease terms changed, explain each change in terms, including the dates for which each set of terms was effective.
 - c. Was the lease at any time reduced to writing? If the answer is yes, produce all documents containing such writing and state during what dates of occupancy the writing was in effect.
2. State the per square foot rent you charged Pooler for the office space:
 - a. Explain how the number given in (2) was calculated and detail the underlying figures used.
 - b. State what factors were considered in deciding upon the rent charged Pooler.
3. State the rent you charged per square foot to other tenants for office space during the period of Pooler's occupancy, and for each such tenant:
 - a. Provide the name and nature of the tenant's business and duration of their occupancy.
 - b. Explain how the figures given in (3) were calculated.
 - c. State what factors were considered in deciding upon the rent charged.
4. Give examples of discounted rentals to other tenants in the Syracuse Building, including the terms and duration of occupancy. For each example involving a written lease, provide a copy of the written lease.

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5. Please state if there were other instances where you employed oral leases for your tenants in the Syracuse Building; if yes, provide the number of instances, names of tenants, nature of the tenant's business and duration of the tenancy.
6. Please provide the rental history of Pooler's office space, i.e. previous leases, tenants, rent charged, periods of vacancy if any, up to the present.
7. Summarize communications between you and the Eagan Real Estate Co. concerning the office space.
8. Please produce each and every document not already provided that concerns the above, except you need not produce documents already submitted to the Commission by letter dated September 23, 1988, or leases discussed in response to Question 3.

21040832146

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Lumbermens Mutual Casualty Co. **MUR:** 2677

I. FACTUAL BACKGROUND

01040332147
This matter originated from a duly sworn and notarized complaint filed with the Commission on August 24, 1988 by the National Republican Congressional Committee ("NRCC"), Joseph Gaylord, Executive Director. The NRCC alleges in its complaint that Rosemary Pooler (a Democratic candidate for New York's 27th Congressional District in 1986 and 1988) and her 1986 and 1988 principal campaign committees (Friends of Rosemary Pooler and Friends of Rosemary Pooler '88), received an in-kind corporate contribution. The contribution is alleged to have been through an office leasing arrangement in which office space was made available to the Pooler campaign from November 1986 to March 1988 at a price below the market rental rate. Lumbermens Mutual Casualty Co., an Illinois corporation and owner of the building, and the Eagan Real Estate Co., a New York corporation which was the leasing agent for the building, are alleged to have violated section 441b(a) by making the corporate contribution.

Ms. Pooler began using office space in the Syracuse Building in November 1986, after her unsuccessful bid that year for a seat in Congress. She entered into an oral agreement to lease the office space from the Eagan Real Estate Co. The agreement required that she only pay for utilities and janitorial services. She reached another oral agreement with Eagan in October 1987,

and agreed to pay \$150 per month for the office. In January 1988 she agreed in writing to a month-to-month lease and to pay \$250 for the office space plus the telephone and electric bills. Irregular rent payments were made by Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 (the "Pooler Committees") to the Eagan Real Estate Co.1/

Counsel representing Lumbermens has filed a response to the complaint, in which he denies that his client violated the Act and disputes some of the factual allegations in the complaint. Lumbermens denies that it gave the Pooler campaign any special leasing arrangement. Lumbermens alternatively contends that it should not be responsible for the actions of Eagan because Eagan acted outside the scope of its agency agreement with Lumbermens.

1/ According to the public record, the Pooler Committees made the following payments to Eagan Real Estate. Unless otherwise noted each payment was designated as rent on the disclosure reports:

Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee)

June 11, 1987 -	\$497.89
August 19, 1987 -	21.75
November 14, 1987 -	<u>253.07</u>
Total	\$772.71

Friends of Rosemary Pooler '88 (Pooler's 1988 principal campaign committee)

December 28, 1987 -	\$300.00
March 1, 1988 -(designated for electric charges for July 1987 through February 1988)	173.72
March 15, 1988 -	750.00
May 2, 1988 -(designated for electric charges for February and March 1988)	<u>41.13</u>
Total	\$1264.85

Total for both committees: \$2037.56

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II. LEGAL ANALYSIS

Corporations are prohibited from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a). Contributions are defined to include "anything of value." 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions of goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). An in-kind contribution occurs when "goods or services [are provided to a candidate] without charge or at a charge that is less than the usual and normal charge for such goods and services." Id. A discounted rate for goods and services may be considered a usual and normal charge if the goods and services are routinely offered at that rate in the ordinary course of the vendor's business to both political and nonpolitical groups. See AOs 1985-28; 1982-30.

Eagan and Lumbermens are both corporations and as such are not allowed to contribute anything of value to a Federal campaign. The complaint alleges that both corporations made an in-kind corporate contribution to the Pooler campaign. The complaint contends that the rent charged by Eagan, the agent for the building, and Lumbermens, the owner of the building, to Rosemary Pooler for the office space was below the usual and normal rent charged other tenants. As a basis for its complaint,

the complainant relies on several attached newspaper articles. One of the articles states, in part, that "Rosemary Pooler launched her second bid for Congress last year in downtown office space for which she signed no lease, made no rent payments in the first seven months she was in the building and eventually paid far less than the rate charged other tenants on the same floor." According to the article, Eagan charged other tenants in the building \$10 to \$12 per square foot for office space similar to that occupied by Pooler. The complaint alleges that Pooler and her Committees paid about \$.23 per square foot for the office space.^{2/} Thus, it is alleged that the difference between the usual and normal charge (i.e., \$10 to \$12 per square foot) and what was actually paid by Pooler and her Committees (i.e., \$.23 per square foot) represents an in-kind corporate contribution to Pooler under the Act.

In its response Lumbermens denies that it made an illegal corporate contribution to the Pooler campaign. Lumbermens states that Pooler rented the premises "as is," and on a week-to-week basis. This arrangement meant that the office space was not improved by Eagan before Pooler moved in, and that Pooler would have had to vacate the office with only a week's notice if

^{2/} The article goes on to state that according to FEC records, the Pooler Committees paid a total of \$1,822.71 for 16 1/2 month's rent on the 504 square foot office, including a check for \$750 paid a few days before she moved to a new headquarters. The public record actually shows that the Pooler Committees paid \$2,037.56, which does include a \$750 check paid on March 15, 1988. According to the article, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor as Pooler, has a yearly lease to pay \$9,000 for 900 square feet. (Syracuse Post-Standard, August 19, 1988).

another tenant was found. Lumbermens states that the office space was listed as available the entire time Pooler was there. The respondent contends that this rental arrangement was in the ordinary course of business, and Pooler paid the normal and usual rental rate considering the circumstances surrounding her rental.^{3/} Respondent Lumbermens concludes that Pooler's leasing arrangement was no violation of the Act, since it was the normal and usual practice for Eagan to lease vacant, unimproved space at rates similar to that charged Pooler.^{4/}

Lumbermens also claims that it is not liable for the acts of Eagan. The respondent argues that Eagan Real Estate manages the building and arranged for the Pooler occupancy, and therefore, should be responsible for any violations of the Act that might result from her occupancy. Lumbermens admits that it has a principal-agent relationship with Eagan, as defined by a 1983 agency agreement that is attached to Lumbermens' response. However, Lumbermens argues that the rental was contrary to the agency agreement and was inappropriate to the agent's authorized goal of renting space in the building. Lumbermens claims that if it had known that a Federal candidate was a prospective tenant,

^{3/} According to the response filed by Lumbermens, the Pooler Committees paid a total of \$2,038 in rent during 15 months. This figure is supported by the public record. According to the response this represents \$3.25/square foot. In contrast, the complainant alleged that the Pooler Committees paid \$1,882.71 in rent over 16 1/2 months amounting to only \$.23 per square foot. The complainant bases its rent calculations on the article in the August 19, 1988, Syracuse Post-Standard.

^{4/} Lumbermens points to three other examples where Eagan assertedly leased unimproved office space to nonpolitical groups below the market rate, but fails to describe the rate charged for two of the three instances cited.

it would have made absolutely certain that no questions existed as to a possible corporate contribution.

Key in assessing the supposed violations of section 441b is determining the "usual and normal" rate for office space in the respondent's building. Despite respondent's claims that the rental agreement with Pooler was normal and usual, the fact remains that Pooler appears to have paid significantly less rent than other tenants in the building, evidencing a rental charge for the premises of less than the usual and normal rate. Furthermore, there is reason to doubt Lumbermens' claim of no political purpose in the lease to Pooler.

The property manager of the building, John McAuliffe, employed by Eagan, knew Pooler was a Federal candidate in 1986, and he was apparently aware of campaign activity taking place in the building. McAuliffe is quoted as saying "[w]e often rent spaces out for political purposes. You rent them out either as a contribution or minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post-Standard, August 19, 1988. Moreover, according to the public record, Lumbermens received rent checks from both of Pooler's campaign committees. As the owner of the building, respondent Lumbermens is legally responsible for the activity of its agent, Eagan. Therefore, there is reason to believe that the Lumbermens Mutual Casualty Co. violated 2 U.S.C. § 441b(a), by making an in-kind corporate contribution to the Pooler campaign.

9104033152



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1989

Richard Cook, Esq.
Hancock & Estabrook
P.O. Box 4976
Syracuse, New York 13221-4976

RE: MUR 2677
Eagan Real Estate Co.

Dear Mr. Cook:

On August 31, 1988, the Federal Election Commission notified your client, the Eagan Real Estate Co., 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 client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 18, 1989, found that there is reason to believe the Eagan Real Estate Co. violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Eagan Real Estate Co. 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 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 the Eagan Real Estate Co., 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

Richard Cook, Esq.
Page 2

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 Keith V. Morgan, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Questions
Factual and Legal Analysis

40332154

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

) MUR 2677
)
)
)
)

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Eagan Real Estate Co.
c/o Richard Cook, Esq.
Hancock & Estabrook
P.O. Box 4976
Syracuse, New York 13221-4976

2104032155
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 fifteen (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 November 1986 to May 2, 1988.

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:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document, and the source or author of the document.

"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.

"Office space" shall mean the office space in the Syracuse Building rented by Rosemary Pooler from November 1986 to March 1988.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR 2677

Questions and Request for the Production of Documents to Eagan Real Estate regarding office space in the Syracuse Building rented by Rosemary Pooler from November 1986 to March 1988.

Questions and Request for the Production of Documents

1. Did you enter into a lease in connection with the office space?

If yes,

- a. What were the terms of the lease?
 - b. If the lease terms changed, explain each change in terms, including the dates for which each set of terms was effective.
 - c. Was the lease at any time reduced to writing? If the answer is yes, produce all documents containing such writing and state during what dates of occupancy the writing was in effect.
2. State the per square foot rent you charged Pooler for the office space:
- a. Explain how the number given in (2) was calculated and detail the underlying figures used.
 - b. State what factors were considered in deciding upon the rent charged Pooler.
3. State the rent you charged per square foot to other tenants for office space during the period of Pooler's occupancy, and for each such tenant:
- a. Provide the name and nature of the tenant's business and duration of their occupancy.
 - b. Explain how the figures given in (3) were calculated.
 - c. State what factors were considered in deciding upon the rent charged.
4. Give examples of discounted rentals to other tenants in the Syracuse Building, including the terms and duration of occupancy. For each example involving a written lease, provide a copy of the written lease.
5. Please state if there were other instances where you employed oral leases for your tenants in the Syracuse Building; if yes, provide the number of instances, names of tenants, nature of the tenant's business and duration of the tenancy.

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6. Please provide the rental history of Pooler's office space, i.e. previous leases, tenants, rent charged, periods of vacancy if any, up to the present.
7. Summarize communications between you and the Lumbermens Mutual Casualty Co. concerning the office space.
8. Please produce each and every document not already provided that concerns the above, except you need not produce documents already submitted to the Commission by letter dated September 20, 1988, or leases discussed in response to Question 3.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Eagan Real Estate Co.

MUR: 2677

I. FACTUAL BACKGROUND

21040832160
This matter originated from a duly sworn and notarized complaint filed with the Commission on August 24, 1988 by the National Republican Congressional Committee ("NRCC"), Joseph Gaylord, Executive Director. The NRCC alleges in its complaint that Rosemary Pooler (a Democratic candidate for New York's 27th Congressional District in 1986 and 1988) and her 1986 and 1988 principal campaign committees (Friends of Rosemary Pooler and Friends of Rosemary Pooler '88) received an in-kind corporate contribution. The contribution is alleged to have been through an office leasing arrangement in which office space was made available to the Pooler campaign from November 1986 to March 1988 at a price below the market rental rate. Lumbermens Mutual Casualty Co., an Illinois corporation and owner of the building, and the Eagan Real Estate Co., a New York corporation, which was the leasing agent for the building, are alleged to have violated section 441b(a) by making the corporate contribution.

Ms. Pooler began using office space in the Syracuse Building in November 1986, after her unsuccessful bid that year for a seat in Congress. She entered into an oral agreement to lease the office space from the Eagan Real Estate Co. The agreement required that she only pay for utilities and janitorial services. She reached another oral agreement with Eagan in October 1987,

and agreed to pay \$150 per month for the office. In January 1988 she agreed in writing to a month-to-month lease and to pay \$250 for the office space plus the telephone and electric bills. Irregular rent payments were made by Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 (the "Pooler Committees") to the Eagan Real Estate Co.^{1/} Counsel representing Eagan Real Estate has filed a response to the complaint, in which he denies that his client has violated the Act and disputes some of the factual allegations in the complaint. Eagan denies that it gave the Pooler campaign any kind of special leasing arrangement.

^{1/} According to the public record, the Pooler Committees made the following payments to Eagan Real Estate. Unless otherwise noted each payment was designated as rent on the disclosure reports:

Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee)

June 11, 1987 -	\$497.89
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II. LEGAL ANALYSIS

Corporations are prohibited from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a). Contributions are defined to include "anything of value." 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes in-kind contributions of goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). An in-kind contribution occurs when "goods or services [are provided to a candidate] without charge or at a charge that is less than the usual and normal charge for such goods and services." Id. A discounted rate for goods and services may be considered a usual and normal charge if the goods and services are routinely offered at that rate in the ordinary course of the vendor's business to both political and nonpolitical groups. See AOs 1985-28; 1982-30.

Eagan is a corporation and as such is not allowed to contribute anything of value to a Federal campaign. The complaint alleges that Eagan made an in-kind corporate contribution to the Pooler campaign because the rent charged by Eagan, the agent for the building, to Rosemary Pooler for the office space was below the usual and normal rent charged other tenants. As a basis for its complaint, the complainant relies on several attached newspaper articles. One of the articles states, in part, that "Rosemary Pooler launched her second bid for Congress last year in downtown office space for which she signed no lease, made no rent payments in the first seven months she was in the building and eventually paid far less than the rate

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charged other tenants on the same floor." According to the article, Eagan charged other tenants in the building \$10 to \$12 per square foot for office space similar to that occupied by Pooler. The complaint alleges that Pooler and her Committees paid about \$.23 per square foot for the office space.^{2/} Thus, it is alleged that the difference between the usual and normal charge (i.e., \$10 to \$12 per square foot) and what was actually paid by Pooler and her Committees (i.e., \$.23 per square foot) represents an in-kind corporate contribution to Pooler under the Act.

Eagan denies that it made an illegal corporate contribution to the Pooler campaign. Eagan states that Pooler rented the premises "as is," and on a week-to-week basis. This arrangement meant that the office space was not improved by Eagan before Pooler moved in, and that Pooler would have had to vacate the office with only a week's notice if another tenant was found. Eagan states that the office space was listed as available the entire time Pooler was there. Eagan contends that this rental arrangement was in the ordinary course of business, and Pooler

^{2/} The article goes on to state that according to FEC records, the Pooler Committees paid a total of \$1,822.71 for 16 1/2 month's rent on the 504 square foot office, including a check for \$750 paid a few days before she moved to a new headquarters. The public record actually shows that the Pooler Committees paid \$2,037.56, which does include a \$750 check paid on March 15, 1988. According to the article, the Upstate Chapter of the Multiple Sclerosis Society, which has an office on the same floor as Pooler, has a yearly lease to pay \$9,000 for 900 square feet. (Syracuse Post-Standard, August 19, 1988).

paid the normal and usual rental rate considering the circumstances surrounding her rental.^{3/} Respondent Eagan concludes that Pooler's leasing arrangement was no violation of the Act, since it was the normal and usual practice for Eagan to lease vacant, unimproved space at rates similar to that charged Pooler.^{4/} Eagan also contends that its arrangement with Pooler was not subject to the jurisdiction of the Act, because it was not renting to her as a Federal candidate. Eagan claims that it had no intent to make a contribution to a candidate for public office, and did not believe it was making a contribution when it agreed to allow Pooler to use the office space.

Key in assessing the supposed violations of section 441b is determining the "usual and normal" rate for office space in the respondent's building. Despite respondent's claims that the rental agreement with Pooler was normal and usual, the fact remains that Pooler appears to have paid significantly less rent than other tenants in the building, evidencing a rental charge for the premises of less than the usual and normal rate.

^{3/} According to the response filed by Eagan, the Pooler Committees paid a total of \$2,038 in rent during 15 months. This figure is supported by the public record. According to the responses this represents \$3.25/square foot. In contrast, the complainant alleged that the Pooler Committees paid \$1,882.71 in rent over 16 1/2 months amounting to only \$.23 per square foot. The complainant bases its rent calculations on the article in the August 19, 1988, Syracuse Post-Standard.

^{4/} Eagan points to three other examples where it assertedly leased unimproved office space to nonpolitical groups below the market rate, but fails to describe the rate charged for two of the three instances cited.

Furthermore, there is reason to doubt Eagan's claim of no political purpose in the lease to Pooler.

The property manager of the building, John McAuliffe, employed by Eagan, knew Pooler was a Federal candidate in 1986, and he was apparently aware of campaign activity taking place in the building. McAuliffe is quoted as saying "[w]e often rent spaces out for political purposes. You rent them out either as a contribution or minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post-Standard, August 19, 1988. Moreover, according to the public record, Eagan received rent checks from both of Pooler's campaign committees. An agency agreement between Eagan and Lumbermens provides Eagan with compensation based on the gross revenue collected from the property during the agreement. Because respondent Eagan set the rent for the building and had a financial interest in the office space through the agency agreement, it is responsible for the apparently below market rent charged Pooler and her Committees. Therefore, there is reason to believe that the Eagan Real Estate Co. violated 2 U.S.C. § 441b(a), by making an in-kind corporate contribution to the Pooler campaign.

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LAW OFFICES

ALAGIA, DAY, MARSHALL,
MINTMIRE & CHAUVIN

1000 THOMAS JEFFERSON STREET, N.W.

WASHINGTON, D.C. 20007

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TELECOPIER (202) 775-9089

CABLE ALBAR

TELEX 44-0712

OFFICES IN:
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NEW ALBANY, INDIANA
PALM BEACH, FLORIDA

DANIEL J. SWILLINGER
PARTNER

VIA MESSENGER

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Suite 657
Washington, D.C. 20463

Re: MUR 2677

Dear Mr. Noble:

Chairman McDonald's April 25, 1989 letter informing Lumbermens Mutual Casualty Co. that the Commission has found Reason to Believe in MUR 2677 was received on April 26, 1989. The letter also contained interrogatories and a request for documents.

Although Lumbermens Mutual would be inclined to explore pre-probable cause conciliation, counsel for the Commission has informed me that your office would not be amenable to that until the interrogatories have been answered and the available documents provided.

I am, therefore, requesting an extension to and including May 26, 1989 for Lumbermens Mutual to respond to the interrogatories and document request, as well as to provide additional information on why no further action should be taken.

Please contact me if I can provide further information regarding this request.

Sincerely,


Daniel J. Swillinger

DJS:mnd

cc: John K. Conway, Esquire
Keith Morgan, Esquire

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

plan

May 4, 1989

Daniel J. Swillinger, Esquire
Alagia, Day, Marshall
Mintmire & Chauvin
1000 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

RE: MUR 2677
Lumbermens Mutual Casually Co.

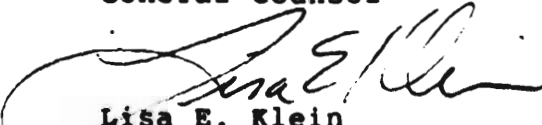
Dear Mr. Swillinger:

This is in response to your hand delivered letter of May 2, 1989, requesting an extension of 15 days until May 26, 1989 to respond to the reason to believe finding against your client, and to answer the interrogatories and document requests in this matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on May 26, 1989.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lisa E. Klein
Assistant General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

HANCOCK & ESTABROOK

89 MAY 10 AM 10:29

JOHN M. HASTINGS, JR.
W. CARROLL
DONALD P. MC CARTHY
PAUL M. HANRAHAN
EDWARD J. PFOML
JOHN R. VARNEY
WILLIAM L. ALLEN, JR.
CHARLES H. UMBRECHT, JR.
DONALD J. KEMPLE
CARL W. PETERSON, JR.
BRUCE G. BODEN
CLARK A. PITCHER
JAMES R. MC VETY
ROBERT A. SMALL
JAMES P. BURNS, 3RD
WALTER L. MEAGHER, JR.
DONALD A. DENTON
DAVID W. LARRISON
ROBERT J. HUGHES, JR.
J. THOMAS BASSETT
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GREGORY R. THORNTON
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DOREEN A. SIMMONS
DAVID E. PEEBLES
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GERALD F. STACK
JAMES E. HUGHES
JEFFREY B. ANDRUS
JANET D. CALLAHAN
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9 PAYNE STREET
HAMILTON, NEW YORK 13346
TELEPHONE (315) 824-1036

May 8, 1989

RAYMOND A. MUST
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CHARLES H. BASSETT
DAVID T. GARVEY
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*ALSO ADMITTED TO FLORIDA BAR

Keith Morgan, Esq.
Federal Election Commission
Washington, DC 20463

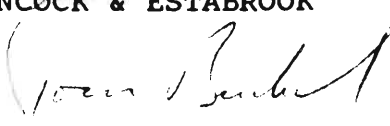
Re: Eagan Real Estate Co.
MUR 2677

Dear Keith:

Pursuant to our recent conversation, I am writing to respectfully request a thirty day extension of time to answer the Interrogatories submitted in this case. Please let me hear from you at your earliest convenience to confirm this request.

Very truly yours,

HANCOCK & ESTABROOK


Thomas C. Buckel, Jr.

TCB/bjk



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 12, 1989

Thomas C. Buckel, Jr.
Hancock & Estabrook
P.O.Box 4976
Syracuse, NY 13221-4976

RE: MUR 2677
Eagan Real Estate Co.

Dear Mr. Buckel:

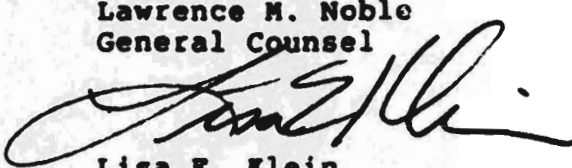
This is in response to your letter dated May 8, 1989, requesting an extension of 30 days until June 15, 1989, to respond to the reason to believe finding against your client, and to answer the interrogatories and document requests in this matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 15, 1989.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lisa E. Klein
Assistant General Counsel

9104032169

FEDERAL ELECTION COMMISSION

89 MAY 26 PM 3:59

BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RE: MUR 2677

RESPONSE OF LUMBERMENS MUTUAL CASUALTY COMPANY

Now comes Lumbermens Mutual Casualty Company, through undersigned counsel, and responds to the Federal Election Commission's letter of April 25, 1989, informing the Company that the Commission has found reason to believe the Act has been violated.

I. INTRODUCTION

The Lumbermens Mutual Casualty Company ("Lumbermens" or "Company") received from the Office of General Counsel on September 6, 1988 a letter transmitting a complaint filed by the National Republican Congressional Committee against Rosemary Pooler, a candidate for Congress from the 27th District of New York, her 1986 and 1988 principal campaign committees, Eagan Real Estate, Inc., and Lumbermens.

The complaint alleged that Ms. Pooler and her committees received an illegal corporate contribution in the form of office space at a below-market-rate rental charge. The office building in question is owned by Lumbermens; Eagan Real Estate manages the building for the Company, and arranged for the Pooler occupancy.

Lumbermens filed a response on September 21, 1988, disputing the complaint in all material respects. The Commission subsequently found reason to believe a violation occurred.

The Company continues to believe that no impermissible contribution occurred, because the rental arrangement was commercially reasonable, both as to the charges and the tenancy. The Company also believes that, while it is the owner of the building, Eagan made the agreement with Ms. Pooler on its own, and Eagan is solely responsible for the transaction, and, therefore, responsible for any corporate contribution should the Commission conclude that such resulted.

II. DISCUSSION

A. The Rental Arrangement Was in the Ordinary Course of Business

The central allegation here is that Ms. Pooler and her committees rented office space at a below market rate. Since the building is owned and managed by incorporated entities, such rate, if true, would constitute an illegal corporate contribution. 2 U.S.C. Sec. 441b(b)(2).

1. Factual Background

The Syracuse Building has approximately 96,000 usable square feet of office space, plus an additional 8,000 square feet of retail space. None of the space is occupied by Lumbermens, or its subsidiaries. Approximately 25% of the office space is currently vacant, which was also the situation at the time the arrangement was made with the Pooler committees.

Eagan Real Estate records and Pooler committee disclosure reports show that the Pooler committees paid a total of \$2,038 in rent during the 15 months, which actually represents a payment of \$3.25/square foot.

The Commission alleges that the per square foot charge was substantially below the usual commercial rate for the building. This too is incorrect.

It is normal commercial practice for Eagan Real Estate to lease vacant, unimproved space at rates similar to that charged Pooler. Eagan Real Estate notes at least three such instances in the past two years in its memorandum dated 9/12/88. These arrangements permit the building management to cover the \$1.90/square foot maintenance and utility cost, which it has to pay whether the space is occupied or not.

During 1987, the Pooler committees were on a week-to-week tenancy and agreed to pay janitorial and electrical costs.

Beginning January 1, 1988, the rent increased to \$250/month, and the tenancy became month-to-month. As noted in the letter to Mr. Thachuck, the premises were rented "as is," and were not

improved during the Pooler tenancy. This represented a substantial saving to the management.

Finally, it should be noted that the space was carried as available for rental throughout the Pooler tenancy. It had been vacant for approximately two years prior to Pooler's occupancy, and it has remained vacant since she moved out at the end of March, 1988.

2. The Rental Meets Standard of "Ordinary Course of Business"

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The Commission early on determined that a corporate contribution does not result if a corporation is acting in the ordinary course of business, even if it appears that a candidate receives certain value for goods or services. AO 1976-86 (CCH ¶ 5224) In that Opinion, the Commission found no corporate contribution existed, even though a billboard promoting the candidate was left up beyond the rental period, because the corporate owner did not deviate from its usual business practice.

In a more recent opinion relating to office space, the Commission concluded that as long as "the agreement with the Committee was in accord with the lessor's usual and normal charge and practice with respect to commercial leases," no corporate contribution results. AO 1982-4 (CCH ¶ 5671), see, also, AO 1985-28 (CCH ¶ 5828).

The information set forth in the factual discussion clearly establishes that the rental to Ms. Pooler and her committees was in keeping with normal rental practices, and amounts paid were, in fact, in excess of the actual cost to maintain the space.

4
The Pooler tenancy was in accord with the treatment of non-political tenants for the similar type of unimproved space and rental arrangement. The Commission errs in comparing this rental with the \$12/square foot charge for fully improved space leased on an annual or multi-year basis.

As long as the rental generated a profit, as it did of \$1.35 per sq. ft., and the same arrangement was available to non-political tenants, as it was, this was a permissible tenancy. For the Commission to conclude otherwise is to substitute its ex post facto judgment for a commercial judgment made under the economic pressure of a 25% vacant building.

3
4
The city of Syracuse suffers from a depressed commercial rental market, especially for old buildings such as this. As long as the basic costs are covered, it is a "commercially reasonable" transaction.

B. Lumbermens Was Not Responsible for the Rental

2
1
The original complaint argued that either Lumbermens or Eagan Real Estate made an illegal corporate contribution. Lumbermens believes that no improper contribution occurred. Since the Commission has preliminarily concluded otherwise, it should be understood that the arrangement was undertaken by Eagan Real Estate without the knowledge or approval of Lumbermens, contrary to the agency agreement between Lumbermens and Eagan.

1. Factual Background

Eagan Real Estate, Inc. is acting as the leasing agent for the Syracuse Building under a 1983 agreement between Lumbermens and Eagan.

Paragraph 1(b) of the Agreement (attached as Exhibit C to the Company's September 21, 1988 response) provides that Eagan, on behalf of Lumbermens, is to "negotiate rentals and leases in the property." Paragraph 7 specifically reserves to the Company the right of final approval of all leases. The Pooler rental was negotiated by and agreed to by Eagan without the knowledge or approval of Lumbermens, a fact which Eagan freely admits. This is contrary to the agency agreement,¹ as well as to Lumbermens' policy and practice.²

2. Lumbermens Is Not Liable for the Acts of Eagan

Lumbermens and Eagan obviously had a principal-agent relationship, defined by the 1983 agreement. A principal is usually liable for the acts of an agent, but there are a variety of exceptions to this rule.

For example, it is well-established that a principal is not responsible for the acts of an agent when those acts were clearly

¹ See the Lumbermens letter, attached to the document request, for Lumbermens' view of the agency agreement, and Eagan's response agreeing to comply.

² Ironically, the multi-candidate PAC of the Kemper Group of insurance companies, of which Lumbermens is a member, contributed to Ms. Pooler's opponent. Any "contribution" to Ms. Pooler was contrary to Lumbermens' corporate policy and interests.

inappropriate to, or unforeseeable in the accomplishment of, the authorized activities of the agent. Restatement (2nd) of Agency, Sec. 231.

This rental was made contrary to the agency agreement, and was inappropriate to the agent's authorized goal of renting space in the building. If Lumbermens, a sophisticated company, had known that a candidate for Federal office was a prospective tenant, it would have made absolutely certain that no questions existed as to a possible corporate contribution. It did not have that opportunity.

The Commission's Factual and Legal Analysis, at p. 6, simply concludes that, "As the owner of the building, respondent Lumbermens is legally responsible for the activities of its agent, Eagan."

That conclusory assertion cannot withstand analysis. A principal is not liable for every act of its agent; the exceptions are legion. Especially here, where the agent admits that it failed to inform the principal (contrary to the agency agreement), the principal cannot be held liable. Stover v. Flowers, 94 N.W. 1100, 120 Ia. 514 (Ia. Sup. Ct.); see, also, CJS, Agency §419.

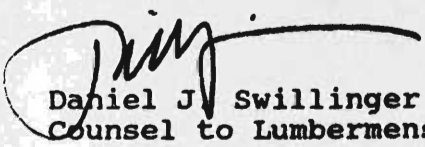
Where the agent's actions subject the principal to possible civil and/or criminal enforcement, an element of knowledge or acquiescence by the principal must exist. Arnot v. Pittston Coal Co., 2 Hun. 591, 5 Thomps. & C. 143 (NY). That element explicitly does not exist here.

III. CONCLUSION

For the foregoing reasons, Lumbermens Mutual Casualty Company respectfully requests that the Commission find no Probable Cause to Believe a violation occurred as it relates to the Company, and dismiss the Company from this proceeding.

Respectfully submitted,

ALAGIA, DAY, MARSHALL, MINTMIRE
& CHAUVIN



Daniel J. Swillinger
Counsel to Lumbermens Mutual
Casualty Company

May 26, 1989

015DJS1.3D/wp

Before the
Federal Election Commission

Re: MUR 2677

Response of Lumbermens Mutual Casualty Co.
to Questions and Request for Documents

1. Did you enter into a lease in connection with the office space?

Response: An oral lease apparently was entered into by Eagan Real Estate without the knowledge or approval of Lumbermens. Lumbermens has no writing regarding the lease except for the September 18, 1988 letter to Nicholas B. Tkachuk, which was provided to the Commission as Exhibit A of Lumbermens' September 21, 1988 response.

2. State the per square foot rent you charged Pooler for the office space.

Response: The total rental received from the Pooler committee over the 15 month period was \$2,038, or \$136/month, for a 500 square foot office. $\$136 \div 500 \times 12 \text{ months} = \3.25 per square foot per year.

3. State the rent you charged per square foot to other tenants for office space during the period of Pooler's tenancy.

Response: The building in question has approximately 96,000 square feet, approximately 75% of which was leased during the period in question. Eagan Real Estate has informed Lumbermens that per square foot rentals during this period generally ranged from \$12.00 to \$13.00, depending upon the length of the lease, the time the original lease was negotiated, the size of the

space, and the commercial office space market in the vicinity at the time the lease was negotiated. The Pooler space represented about one-half of one percent (.0052) of the total office space in the building.

4. Give examples of discounted rentals to other tenants in the Syracuse Building, including the terms and duration of occupancy.

Response: Paragraph 5 of Eagan Real Estate's September 12, 1988 Memorandum (Exhibit B to the September 21 filing) describes three instances of "discounted" rentals.

5. Please state if there were other instances where you employed oral leases for your tenants in the Syracuse Building.

Response: Lumbermens is not in possession of information regarding oral leases beyond what Eagan Real Estate provided in its letter and memorandum.

6. Please provide the rental history of Pooler's office space.

Response: Lumbermens is not in possession of detailed information regarding the rental history. Eagan informed Lumbermens that the space was vacant for many months prior to the Pooler tenancy, and remains vacant.

7. Summarize communications between you and Eagan Real Estate Co. concerning the office space.

Response: The letter and memorandum from Eagan Real Estate represent the entire body of written communications. The substance of telephone communications which occurred after this matter was raised in the press are reflected in the written

communications regarding the Pooler matter. Lumbermens was not aware of the Pooler arrangement prior to the newspaper stories. Attached are two additional letters: one from Lumbermens to Eagan, and a reply regarding Eagan's failure to comply with the agency agreement.

Signed under penalties of perjury.

5/25/89
Date

VP Shubh
For Lumbermens Mutual Casualty Co.

1651JC

October 7, 1988

Mr. John E. McAuliffe
Manager
Eagan Real Estate, Inc.
Mony Tower I Suite 1600
100 Madison Street
Syracuse, N.Y. 13202-2794

ROSEMARY POOLER OCCUPANCY

Dear Jack:

As you know, Lumbermens Mutual Casualty Company (LMC) recently received a complaint filed by the Federal Election Commission relating to the tenancy of a candidate for political office in our Syracuse building. The complaint alleged that this candidate paid a below market rent on the space leased from LMC and thus was the recipient of an illegal corporate campaign contribution from LMC.

Our records show, and you have acknowledged in writing, that LMC had no knowledge of this individual or her tenancy in the Syracuse building.

Regardless of the question of whether this tenancy was at or below a fair market rent, we must remind you of the provisions in our agreement, which provide:

"7. All contracts or matters including, but not limited to leases or legal proceedings directly or indirectly pertaining to the property, its management or otherwise, shall at all times be subject to the final approval and instructions of the "Owner," it being specifically agreed that the "Owner" reserves this authority."

At a minimum, this provision would require that all leases be reduced to writing and made subject to LMC's prior written approval.

Please confirm in writing your understanding of this provision of our agreement, so that there can be no similar misunderstandings in the future.

Sincerely,

LUMBERMENS MUTUAL CASUALTY COMPANY

N. B. Tkachuk
Real Estate Officer

EAGAN

Real Estate, Inc.

COMMERCIAL	RESIDENTIAL
MANAGEMENT	MORTGAGES
INDUSTRIAL	APPRAISALS



LARGEST REAL ESTATE
ORGANIZATION IN
NEW YORK STATE
outside Metropolitan Area

October 18, 1988
"Our 69th Year"

Nicholas B. Tkachuk
Real Estate Officer
Lumbermens Mutual Casualty Company
Kemper Insurance Building
Long Grove, IL 60049

Re: ROSEMARY POOLER OCCUPANCY

Dear Nick:

This will acknowledge your letter of October 7th, 1988. We are writing to assure you that in the future our firm will strictly abide by the provisions contained in Paragraph 7 of the Management Contract dated December 1, 1983.

We regret any inconvenience caused you due to the above occupancy and assure you that such an occurrence will not be repeated.

Thank you for your continued cooperation.

Very truly yours,

EAGAN REAL ESTATE, INC.

John E. McAuliffe
John E. McAuliffe
Manager

JEM/pl

HANCOCK & ESTABROOK

COUNSELORS AT LAW

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June 14, 1989

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WILLIAM L. ALLEN JR.
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CLARK A. PITCHER
JAMES R. MC VET
ROBERT A. SMALL
JAMES P. BURNS SR.
WALTER L. WEAVER JR.
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ROBERT J. HUGHES JR.
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GREGORY A. THORNTON
E. PARKER BROWN II
DOREEN A. SIMMONS
DAVID E. PEEBLES
JAMES E. SPADRES
JAMES J. CAMPBELL
GERALD P. STACE
JAMES E. HUGHES
JEFFREY B. ANDRUS
JANET D. CALLEHAN
THOMAS C. BUCKEL JR.
MICHAEL L. CORP.

03 JUN 16 1989

JOHN M. HASTINGS JR.
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*ALSO ADMITTED TO FLORIDA BAR

Keith Morgan, Esq.
Federal Election Commission
Washington, DC 20463

Re: Eagan Real Estate Co.
MUR 2677

Dear Keith:

Enclosed please find my client's answer to the
Interrogatories in this matter.

Very truly yours,

HANCOCK & ESTABROOK

Thomas C. Buckel, Jr.

TCB/bjk
Enclosure
cc: Mr. Jack McAuliffe

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FEDERAL ELECTION COMMISSION
JUN 16 1989

In Re:

EAGAN REAL ESTATE,

Respondent.

ANSWERS TO
INTERROGATORIES

Respondent, Eagan Real Estate (hereinafter "Eagan"),
hereby answer the Interrogatories as follows:

INTERROGATORIES #1: Did you enter into a lease in connection
with the office space?

(a) What were the terms of the lease?

(b) If the lease terms changed, explain
each change in terms, including the dates for which each set of
terms was effective.

(c) Was the lease at any time reduced
to writing? If the answer is yes, produce all documents
containing such writing and state during what dates of occupancy
the writing was in effect.

ANSWER #1: Yes.

(a) Eagan agreed to lease Suite 202 in
the Syracuse Building to Rosemary Pooler on a week-to-week
basis, "as is" with no improvements, at the monthly rate of
\$3.25 per square foot, commencing January 1, 1987, through
December 31, 1987 subject at all times to termination upon
finding a permanent tenant for the premises. Thereafter, from
January 1, 1988 through March 31, 1988, the monthly rate was
increased to \$5.13 per square foot.

(b) On or about March 15, 1988, a written lease agreement was signed, a copy of which is attached hereto. After declaring her candidacy for Congress, Pooler vacated the premises on or about March 31, 1989.

(c) A copy of the lease is attached hereto.

INTERROGATORY #2: State the per square foot rent you charged Pooler for the office space:

(a) Explain how the number given in (2) was calculated and detail the underlying figures used.

(b) State what factors were considered in deciding upon the rent charged Pooler.

ANSWER #2: \$3.25 through December 31, 1987; \$5.13 thereafter.

(a) Recovery of pro-rata charges for janitorial services, electricity and taxes and saving of the ordinary tenant improvement costs of \$10.00 to \$15.00 per square foot.

(b) Recovery of all pro-rata costs for the space, which was otherwise vacant; use and occupancy of otherwise vacant space, to increase the marketability and attractiveness of the Building as a whole for prospective tenants; saving of tenant improvement expenses; ability to make a small profit on otherwise vacant space which is potentially untenable for ordinary office purposes due to its location (see diagram attached).

4032136
INTERROGATORY #3: State the rent you charged per square foot to other tenants for office space during the period of Pooler's occupancy, and for each such tenant:

(a) Provide the name and nature of the tenant's business and duration of their occupancy.

(b) Explain how the figures given in (3) were calculated.

(c) State what factors were considered in deciding upon the rent charged.

ANSWER #3: See rent roll attached.

(a) See rent roll attached.

(b) Comparable rentals in Syracuse, New York; cost of tenant improvements; marketability and attractiveness of space; pro-rata share of overhead expenses; amount of square-footage leased.

(c) See 3(b) above.

INTERROGATORY #4: Give examples of discounted rentals to other tenants in the Syracuse Building, including the terms and duration of occupancy. For each example involving a written lease, provide a copy of the written lease.

ANSWER #4: Respondent objects to the premise of this interrogatory in that the space occupied by Pooler is basically untenable, and is currently vacant with no tenant prospects, such that any rent received for such space, by definition, is not "discounted". Other comparable rates during the period at issue are as follows:

(a) Mutual of New York leased 1,280 square feet on the fifth floor on a month-to-month basis, at the rate of \$2.00 per square foot, for use in a scholastic art competition.

(b) M. Raftrey leased 1,000 square feet on the second floor on a month-to-month basis, at the rate of \$2.00 per square foot, for charitable purposes.

(c) Energy Controls leased 3,800 square feet on the third floor on a month-to-month basis, at the rate of \$3.50 per square foot.

INTERROGATORY #5: Please state if there were other instances where you employed oral leases for your tenants in the Syracuse Building; if yes, provide the number of instances, names of tenants, nature of the tenant's business and duration of the tenancy.

ANSWER #5: Yes, See 4 above.

INTERROGATORY #6: Please provide the rental history of Pooler's office space, i.e. previous leases, tenants, rent charged, periods of vacancy if any, up to the present.

ANSWER #6: The space occupied by Pooler was part of a 1,738 square foot unit that was occupied by the Jefferson Franklin Corporation from November 1, 1984 until May 31, 1985, when the tenant was evicted for non-payment of rent. This tenant's rental for the larger space was leased at the rate of \$6.83 per square foot. This space was subsequently divided, with a physician's office occupying approximately 1,153 square

feet. The balance of the space was rented to Pooler. The space rented to Pooler has been vacant since March, 1988, when she terminated her lease. At all times during Pooler's occupancy, and carrying on to the present, the space was carried on Eagan Real Estate's list of premises available for rental, along with other second floor space. No tenant prospects presently exist for this space, and the Syracuse Building has a twenty-five (25%) percent vacancy rate.

INTERROGATORY #7: Summarize communications between you and the Lumbermens Mutual Casualty Co. concerning the office space.

ANSWER #7: None.

INTERROGATORY #8: Please produce each and every document not already provided that concerns the above, except you need not produce documents already submitted to the Commission by letter dated September 20, 1988, or leases discussed in response to Question 3.

ANSWER #8: Documents attached.

Dated: June 8, 1989.

Eagan Real Estate

By: John C. Murphy
MONY Tower I
Syracuse, New York 13202

STATE OF NEW YORK)
COUNTY OF ONONDAGA)

John C. Murphy, being duly sworn, deposes and
says that deponent is the President of Eagan Real Estate
the corporation named in the within action; that deponent has
read the foregoing Answers to Interrogatories and knows the
contents thereof; and that the same is true to deponent's own
knowledge, except as to the matters therein stated to be alleged
on information and belief, and as to those matters deponent
believes it to be true. Deponent is an officer thereof, to-wit,
its President.

John C. Murphy

06C 3099

EPSTEIN BECKER & GREEN, P.C.

ATTORNEYS AT LAW

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**510 KING STREET, SUITE 301
ALEXANDRIA, VIRGINIA 22314-3132†
(703) 684-1204**

June 16, 1989

HAND-DELIVERED

**Keith V. Morgan, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463**

**RE: MUR 2677; Respondents: Rosemary Pooler, Friends
of Rosemary Pooler, Friends of Rosemary Pooler
'88, and James M. Hanley As Treasurer**

Dear Mr. Morgan:

On behalf of the above-referenced respondents in MUR 2677, we hereby request an extension of time until July 9, 1989 in which to respond to the Commission's reason-to-believe determination in this matter, as well as the interrogatories and request for production of documents forwarded to the respondents.

This extension of time is necessary for several reasons. First, as discussed, the vast majority of the files and records of the Pooler Campaign were put in storage in Syracuse after the 1988 General Election. Access to these documents is essential to the preparation of an adequate response in this matter. Ms. Pooler has requested these records from storage, and they should be made available to her next week. Thus, an extension of time is required

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
JUN 16 PM 3:27

Keith V. Morgan, Esquire
June 16, 1989
Page 2

to review these documents and prepare a full response to the Commission's findings and interrogatories.

Second, as you are aware, approximately eight months have elapsed between the time the Complaint was filed in MUR 2677 and respondents' notification of a reason-to-believe finding. In that time, Ms. Pooler was defeated in her bid for a congressional seat, and has now returned to private life. She no longer has a campaign staff or a campaign office. Thus, she has to work around her own hectic work/travel schedule, and the work/vacation schedules of former staffers, in order to compile the information requested by the Commission. This is a time-consuming task, necessitating the requested extension of time.

Therefore, for the reasons set forth herein, we respectfully request that the requested extension of time be granted.

Sincerely,



Leslie J. Kerman
Respondents' Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 21, 1989

Leslie Kerman, Esquire
Epstein, Becker & Green, P.C.
1140 19th Street, N.W.
Washington, D.C. 20036-6601

RE: MUR 2677
Rosemary Pooler, Friends of
Rosemary Pooler, Friends of
of Rosemary Pooler '88
and James M. Hanley,
as treasurer of both
Committees

Dear Ms. Kerman:

This is in response to your hand delivered letter dated June 16, 1989, requesting an extension until July 9, 1989 to respond to the Commission's reason to believe findings, and questions and document requests in this matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, since July 9, 1989 is a Sunday, your response is due by the close of business on Monday, July 10, 1989.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lisa E. Klein
Assistant General Counsel

89 JUN 23 AM 9:09

In Re:

EAGAN REAL ESTATE,

ANSWERS TO
INTERROGATORIES

Respondent.

Respondent, Eagan Real Estate (hereinafter "Eagan"),
hereby answer the Interrogatories as follows:

INTERROGATORIES #1: Did you enter into a lease in connection
with the office space?

(a) What were the terms of the lease?

(b) If the lease terms changed, explain
each change in terms, including the dates for which each set of
terms was effective.

(c) Was the lease at any time reduced
to writing? If the answer is yes, produce all documents
containing such writing and state during what dates of occupancy
the writing was in effect.

ANSWER #1: Yes.

(a) Eagan agreed to lease Suite 202 in
the Syracuse Building to Rosemary Pooler on a week-to-week
basis, "as is" with no improvements, at the monthly rate of
\$3.25 per square foot, commencing January 1, 1987, through
December 31, 1987 subject at all times to termination upon
finding a permanent tenant for the premises. Thereafter, from
January 1, 1988 through March 31, 1988, the monthly rate was
increased to \$5.13 per square foot.

(b) On or about March 15, 1988, a written lease agreement was signed, a copy of which is attached hereto. After declaring her candidacy for Congress, Pooler vacated the premises on or about March 31, 1989.

(c) A copy of the lease is attached hereto.

INTERROGATORY #2: State the per square foot rent you charged Pooler for the office space:

(a) Explain how the number given in (2) was calculated and detail the underlying figures used.

(b) State what factors were considered in deciding upon the rent charged Pooler.

ANSWER #2: \$3.25 through December 31, 1987; \$5.13 thereafter.

(a) Recovery of pro-rata charges for janitorial services, electricity and taxes and saving of the ordinary tenant improvement costs of \$10.00 to \$15.00 per square foot.

(b) Recovery of all pro-rata costs for the space, which was otherwise vacant; use and occupancy of otherwise vacant space, to increase the marketability and attractiveness of the Building as a whole for prospective tenants; saving of tenant improvement expenses; ability to make a small profit on otherwise vacant space which is potentially untenable for ordinary office purposes due to its location (see diagram attached).

INTERROGATORY #3: State the rent you charged per square foot to other tenants for office space during the period of Pooler's occupancy, and for each such tenant:

(a) Provide the name and nature of the tenant's business and duration of their occupancy.

(b) Explain how the figures given in (3) were calculated.

(c) State what factors were considered in deciding upon the rent charged.

ANSWER #3: See rent roll attached.

(a) See rent roll attached.

(b) Comparable rentals in Syracuse, New York; cost of tenant improvements; marketability and attractiveness of space; pro-rata share of overhead expenses; amount of square-footage leased.

(c) See 3(b) above.

INTERROGATORY #4: Give examples of discounted rentals to other tenants in the Syracuse Building, including the terms and duration of occupancy. For each example involving a written lease, provide a copy of the written lease.

ANSWER #4: Respondent objects to the premise of this interrogatory in that the space occupied by Pooler is basically untenable, and is currently vacant with no tenant prospects, such that any rent received for such space, by definition, is not "discounted". Other comparable rates during the period at issue are as follows:

(a) Mutual of New York leased 1,280 square feet on the fifth floor on a month-to-month basis, at the rate of \$2.00 per square foot, for use in a scholastic art competition.

(b) M. Raftrey leased 1,000 square feet on the second floor on a month-to-month basis, at the rate of \$2.00 per square foot, for charitable purposes.

(c) Energy Controls leased 3,800 square feet on the third floor on a month-to-month basis, at the rate of \$3.50 per square foot.

INTERROGATORY #5: Please state if there were other instances where you employed oral leases for your tenants in the Syracuse Building; if yes, provide the number of instances, names of tenants, nature of the tenant's business and duration of the tenancy.

ANSWER #5: Yes, See 4 above.

INTERROGATORY #6: Please provide the rental history of Pooler's office space, i.e. previous leases, tenants, rent charged, periods of vacancy if any, up to the present.

ANSWER #6: The space occupied by Pooler was part of a 1,738 square foot unit that was occupied by the Jefferson Franklin Corporation from November 1, 1984 until May 31, 1985, when the tenant was evicted for non-payment of rent. This tenant's rental for the larger space was leased at the rate of \$6.83 per square foot. This space was subsequently divided, with a physician's office occupying approximately 1,153 square

feet. The balance of the space was rented to Pooler. The space rented to Pooler has been vacant since March, 1988, when she terminated her lease. At all times during Pooler's occupancy, and carrying on to the present, the space was carried on Eagan Real Estate's list of premises available for rental, along with other second floor space. No tenant prospects presently exist for this space, and the Syracuse Building has a twenty-five (25%) percent vacancy rate.

INTERROGATORY #7: Summarize communications between you and the Lumbermens Mutual Casualty Co. concerning the office space.

ANSWER #7: None.

INTERROGATORY #8: Please produce each and every document not already provided that concerns the above, except you need not produce documents already submitted to the Commission by letter dated September 20, 1988, or leases discussed in response to Question 3.

ANSWER #8: Documents attached.

Dated: June 8, 1989.

Eagan Real Estate

By: John C. Murphy
MONY Power I
Syracuse, New York 13202

STATE OF NEW YORK)
COUNTY OF ONONDAGA)

John C. Murphy, being duly sworn, deposes and says that deponent is the President of Eagan Real Estate the corporation named in the within action; that deponent has read the foregoing Answers to Interrogatories and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. Deponent is an officer thereof, to-wit, its President.

John C. Murphy

Sworn to before me this
8th day of June, 1989.

Brenda J. Kelley
Notary Public

BRENDA J. KELLEY
Notary Public, State of New York
Qualified in Onon. Co. No. 4800331
My Commission Expires 10/31/89

EAGAN

Real Estate, Inc.

COMMERCIAL

RESIDENTIAL

MANAGEMENT

MORTGAGES

INDUSTRIAL

APPRAISALS



LARGEST REAL ESTATE
ORGANIZATION IN
NEW YORK STATE
Outside Metropolitan Area

March 15, 1988
"Our 69th Year"

Friends of Rosemary Pooler
Suite 202 - Syracuse Building
224 Harrison Street
Syracuse, NY 13202

Att: Tina Stoll

Dear Ms. Stoll:

Suite 202 of the Syracuse Building, designated as Area "242" and outlined in red on the attached Plan will be leased to the Friends of Rosemary Pooler on a month-to-month basis commencing March 1, 1988 at the monthly rent of 250.00 excluding electricity.

It is understood that the Landlord may obtain possession of these premises by serving notice on the Tenant to vacate no later than thirty (30) days after service of notice.

Yours very truly,

EAGAN REAL ESTATE, INC.
Managing Agent

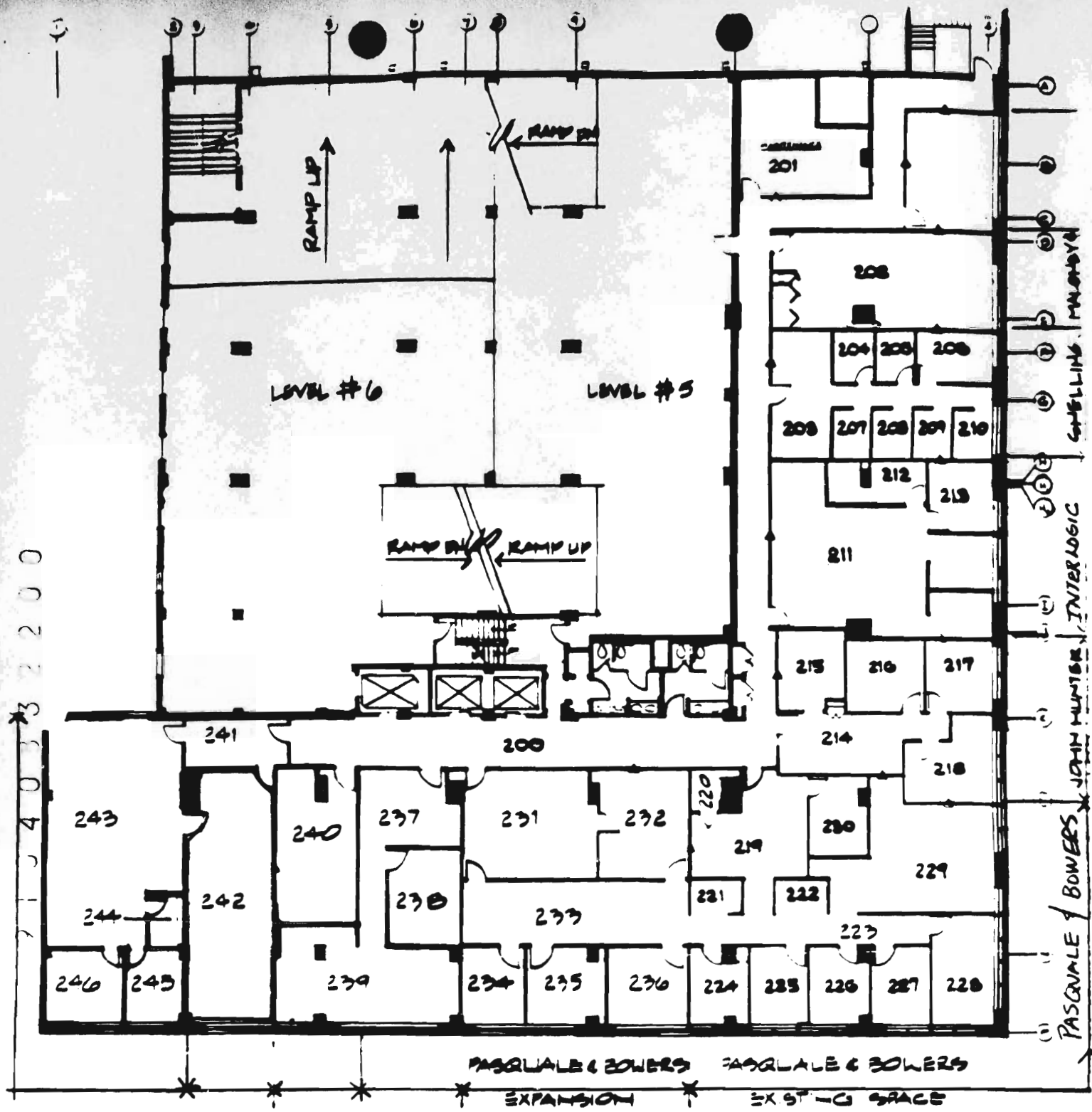
John E. McAuliffe
Authorized Agent

JEM/pl
Enc.

ACCEPTED:

FRIENDS OF ROSEMARY POOLER

By: Tina Stoll



SYRACUSE BLDG.

2nd FLOOR

HUEBER HARES GLAVIN ARCHITECTS • LANDSCAPE ARCHITECTS • ENGINEERS 725 W. ONONDAGA ST. 13206		NORTH SCALE 1" = 10'
SYRACUSE, NEW YORK (315) 476-0202		PASQUALE & BOWERS

SYRACUSE BUILDING

224 Harrison Street, Syracuse, New York

SPACE	TENANT	LEASE		SQ. FT. AREA	SQ. FT. RATE	RENTAL
		TERM YRS.	EXPIRES			
Ground Floor	ALLRIGHT DUTCH PARKING, INC. Cancellation in the event building is sold or that Lessee discontinues its parking services on 90 day notice. 5/1/86-10/31/87 11/1/87-10/31/92	3	10/31/92	73,446		30,000.00 33,000.00
First Floor	RAYMOND J. SMITH, d/b/a "King Raymond's" , Taxes & Oper. @ 2% BY 1983. 6% of sales over \$289,067; \$341,367. 7/1/83-6/30/88 7/1/88-6/30/93 Area B & C Pizza Space	10	6/30/93	3,034	4.47 5.51	13,572.00 16,704.00
	ROBERT L. RUGG, d/b/a "Postal Instant Press" , Taxes & Oper. @ 1%, BY 1980. (1) 5-Yr. Opt. to renew @ \$8,900/yr.	5	4/30/88	890	6.50	5,785.00
	GLAMOUR CENTER COIFFURES, INC. Taxes & Oper., BY 1982. 6/1/85-5/31/88 6/1/88-5/31/90	5	5/31/90	950	8.50 10.00	8,075.00 9,500.00
	BENEFICIAL FINANCE CO. OF N.Y. Taxes & Oper. @ 2%, BY 1983.	5	6/30/88	1,933	6.50	12,564.43
Second Floor	VACANT			1,107		
	JOHN T. HUNTER, ESQ. , Taxes & Oper. @ .007%, BY 1982.	5	8/31/86	852	11.00	9,377.52
	SNELLING & SNELLING , Taxes & Oper. @ 8%, BY 1982	5	8/31/86	770	9.00	6,930.00
	MOLONEY & FLETCHER , Taxes & Oper. @ .6%, BY 1982. Lessee has option to acquire alternate space should it become available @ \$9/sf.	3	8/31/89	540	13.00	7,020.00
	PASQUALE & BOWERS , Taxes & Oper. @ 3.7%, BY 1985.	5	1/31/90	3,716	11.34	42,140.36

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SYRACUSE BUILDING

224 Harrison Street, Syracuse, New York

SPACE	TENANT	LEASE		SQ. FT. AREA	SQ. FT. RATE	RENTAL
		TERM YRS.	EXPIRES			
Second Floor X	DATAPOINT CORPORATION, Taxes & Oper. @ 1.32%, BY 1982. \$125/mth for 5 parking spaces w/ 30 days notice to cancel. (1) 3-Yr. Opt. to renew at prevailing market rate. (Subleased 1,049 SF to Multiple Sclerosis)	5	11/14/86	1,263	9.50	\$ 11,998.50
✓	JEFFERSON FRANKLIN CORPORATION APPLICATION PROGRAMMING ASSOCIATES			1,738		
	VACANT			330		
Third Floor X	T. R. LOWE, INC., d/b/a "Management Recruiters of Syracuse, Taxes & Oper. @ 1.7% BY 1983.	5	5/31/88	1,497	12.10	18,117.00
✓	ONONDAGA COUNTY MEDICAL SOCIETY, Taxes & Oper. @ 3% w/cap of \$1,500, BY 1982; 3% w/cap of \$7,500 BY & bal. of term, 1983.	5	5/31/87	3,000	10.31	30,930.00
✓	MC AULIFFE & MC AULIFFE, Taxes Oper.; BY 1982 @ 2.1%.	5	5/31/90	2,064		
	5/1/85-4/31/87				11.34	23,408.00
	6/1/87-5/31/90				12.17	25,128.00
✓	UNEMPLOYMENT TAX COUNCIL, Taxes & Oper. @ 5.4%, BY 1982.	5	5/31/87	5,133	9.81	50,376.00
✓	BAUM & WOODARD, (Individually), Taxes & Oper. @ 1.15%, BY 1982.	5	9/30/87	1,108	11.38	12,614.00
Fourth Floor	U.S.F. & G. CO., Taxes & Oper. @ 15.04%, BY 1982. (1) 5-Yr. Opt. w/ rent established for 1st-5 Yr. Opt. (\$151,600/yr.) & no more than \$13.75/s.f.	5	12/31/92	14,400	10.53	151,620.00
Fifth Floor A	NORTHEAST DAIRY COOPERATIVE, INC. Taxes & Oper. @ 15.04%, BY 1984 Space Subleased To: U.S.F. & G.	5	12/31/88	9,230	10.52	97,057.00

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SYRACUSE BUILDING

224 Harrison Street, Syracuse, New York

SPACE	TENANT	LEASE		SQ. FT. AREA	SQ. FT RATE	RENTAL
		TERM YRS.	EXPIRES			
Fifth Floor	ALI, PAPPAS & COX, Taxes & Oper. @ 5.2%, BY 1985. 9/1/85-8/31/88 9/1/88-8/31/90 9/1/90-8/31/95; going market rate but no less than \$12/s.f.	10	8/31/95	5,170	10.00 12.00	\$ 51,700.00 62,040.00
Sixth Floor	NORTHEAST DAIRY COOPERATIVE, INC. VACANT	5	6/30/86	2,742 11,658	9.00	24,678.00
Seventh Floor	EYE CONSULTANTS OF SYRACUSE, P.C. Taxes & Oper. @ 9.22%, BY 1982 (% is for full occupancy of bldg. or 85%. Should bldg. not be fully occupied, then % to be recalculated) Escalation to be increased to 10.27% should add'l. 1,000 S.F. be acquired.	5	12/31/87	8,755	10.19	89,213.45
	MASS. MUTUAL (AGENCY) Oper. @ 10.5%.	7yrs. 11Mo.	2/28/92	2,856	6.50	18,555.00
	WM. H. McGEE & CO., INC., Taxes & Oper. @ .0075%, BY 1982.	3	12/31/87	677	12.00	8,124.00
	CARPENTER & HUGHES, INC., Taxes & Oper. @ .006%, BY 1982.	5	1/31/87	627	10.00	6,270.00
	EASTERN PLANNED INCOME, INC. Taxes & Oper. @ .9%, BY 1985.	5	11/30/89	949	12.00	11,388.00
Eighth Floor	MASS. MUTUAL LIFE INS. CO. (GROUP) Taxes & Oper. @ 1.1%, By 1985.	3	4/30/88	884	13.00	11,492.00
	MASS. MUTUAL (AGENCY), Taxes & Oper. @ 11.7%, BY 1982. (1) 5-Yr. Opt. Rental same as 10th yr. of Lease + 50% of COL increase between 1982 & 1992 & all accrued escalation from 1982. Add'l. opt to lease balance of 8th fl. space at current psf rate. 12/1/84-2/28/87 3/1/87-2/28/92	10	2/28/92	8,859	15.17 20.14	134,348.76 178,382.76

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SYRACUSE BUILDING

224 Harrison Street, Syracuse, New York

SPACE	TENANT	LEASE		SQ. FT. AREA	SQ. FT RATE	RENTAL
		TERM YRS.	EXPIRES			
Eighth Floor	HARRIGAN & DOLAN, Taxes & Oper. @ 1.7%, BY 1982.	5	9/30/87	1,575		
	10/1/85-9/30/86				13.00	\$20,475.00
	10/1/86-9/30/87				14.00	22,050.00
Basement Storage	HAWTHORNE CONSULTING SERVICES, Taxes & Oper. @ 2.2%, BY 1982. Lease may be terminated after 3 yrs. w/ 90 day's written notice.	5	10/31/87	2,090	12.30	25,707.00
	VACANT - Storage			200		
	BENEFICIAL FINANCE CO. OF N.Y.	M/M		200	3.00	600.00
	ONONDAGA COUNTY MEDICAL SOCIETY	5	5/31/87	200	3.00	600.00
	U.S.F. & G. COMPANY	5	12/31/91	400	3.00	1,200.00
	NORTHEAST DAIRY COOPERATIVE, INC.	3	11/30/88	800	1.50	1,200.00
	EYE CONSULTANTS OF SYRACUSE, P.C.	4	12/31/87	200	3.00	600.00
	MASS. MUTUAL LIFE INS. CO. (AGENCY)	M/M		200	3.00	600.00
	ALI, PAPPAS & COX			200		
	KING RAYMOND'S			800		
	TOTALS:					
	BASEMENT SPACE: 3,000 SF					
	VACANT BASEMENT SPACE: 200 SF					
	GARAGE SPACE: 73,446					
	RENTED SPACE: 87,302 SF					
	VACANCIES: 13,095 SF					
	ANNUAL RENTALS TOTAL: \$938,336.02					

rs
7/30/86

21040332204

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EPSTEIN BECKER & GREEN, P.C.
ATTORNEYS AT LAW

1140 19TH STREET, N.W.
WASHINGTON, D.C. 20036-6601¹

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LOS ANGELES, CALIFORNIA 90067-2501
(213) 556-8861

SIX LANDMARK SQUARE
STAMFORD, CONNECTICUT 06901-2704¹
(203) 348-3737

212 CARNEGIE CENTER
PRINCETON, NEW JERSEY 08540-6212
(609) 452-2445

27 SCHOOL STREET
BOSTON, MASSACHUSETTS 02108-4303
(617) 720-3555

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TEXAS ONLY

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SAN FRANCISCO, CALIFORNIA 94111-5954
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DETROIT, MICHIGAN 48226-3412
(313) 965-3190

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TALLAHASSEE, FLORIDA 32301-2524
(904) 681-0596

2400 SOUTH DIXIE HIGHWAY, SUITE 100
MIAMI, FLORIDA 33133
(305) 856-1100

510 KING STREET, SUITE 301
ALEXANDRIA, VIRGINIA 22314-3132¹
(703) 684-1204

August 14, 1989

HAND-DELIVERED

Keith V. Morgan, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463

RE: MUR 2677; Respondents: Rosemary Pooler, Friends
of Rosemary Pooler, Friends of Rosemary Pooler
'88, and James M. Hanley As Treasurer

Dear Keith:

Enclosed please find responses to the Commission's questions
and requests for documents in the above-referenced matter.

In addition, Respondents resubmit their initial response to
the complaint, dated September 23, 1988. The responses forwarded
to you today support the arguments and conclusions previously made
by Respondents. In their entirety, these documents clearly
demonstrate that Respondents did not violate federal election law
in connection with their use of office space in the Syracuse
Building, and accordingly, that the Commission should decline to
find probable cause in this action.

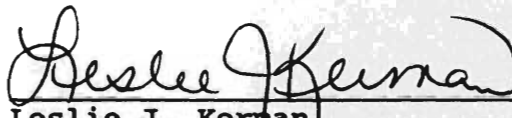
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OFFICE OF GENERAL COUNSEL

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Keith V. Morgan, Esquire
August 14, 1989
Page 2

Thank you for your assistance and cooperation in this matter.
If you have any further questions regarding this complaint, please
do not hesitate to contact me at 202/861-1877.

Very truly yours,


Leslie J. Kerman
Counsel to Respondents

Enclosure

21540332206

**FEDERAL ELECTION COMMISSION
MATTER-UNDER-REVIEW 2677**

RESPONDENT: ROSEMARY POOLER

Questions and Request for the Production of Documents to Rosemary Pooler regarding the office space rented in the Syracuse Building from November, 1986 to March, 1988.

RESPONSE

INTERROGATORY NO. 1: State the total amount in expenditures you made in connection with office space:

- a. State how each expenditure related to the office space.
- b. Provide dates for each expenditure.
- c. Identify all documents that relate to each expenditure, including cancelled checks.

RESPONSE:

Ms. Pooler made a number of expenditures in connection with the legal, personal and business, non-political activities she engaged in from the above-referenced office space. The Commission, however, has no jurisdiction to question Ms. Pooler, or request documents from her, regarding her legal, personal and business, non-political expenditures and activities, particularly for a time period when she was not a candidate for federal office. Moreover, as Ms. Pooler is a lawyer, information in connection with the activities for client(s) undertaken by her from the referenced office space is privileged.

INTERROGATORY NO. 2: State your relationship with the Eagan Real Estate Co. and/or its officers, directors, agents or employees:

- a. Identify all documents relating to any relationship between you and Eagan Real Estate.
- b. Identify any leases signed by you with Eagan Real Estate for the office space.

RESPONSE:

a. As stated in the response of Pooler and the Pooler committees dated September 23, 1988, the rental relationship between Rosemary Pooler and Eagan was pursuant to an oral agreement and, therefore, no documentation was prepared. Eagan continued to seek permanent tenants for the office space while Pooler used the space for legal, personal and business, non-political activities on a temporary basis. An oral agreement was, therefore, satisfactory to both parties.

Other than the referenced rental arrangement, to the best of her knowledge, Ms. Pooler has no relationship(s) with Eagan Real Estate Co. and/or any of its officers, directors, agents or employees, except that she and John McAuliffe have been personal friends. However, it is her understanding that her primary opponent's father worked for Eagan Real Estate during the time period covered by this matter.

b. The lease was oral and not written.

INTERROGATORY NO. 3: State what your relationship is or was with John McAuliffe, the property manager for Eagan Real Estate. Identify all documents relating to any relationship between you and Mr. McAuliffe.

RESPONSE:

John McAuliffe and Rosemary Pooler have been personal friends.

There is no relevant documentation.

INTERROGATORY NO. 4: State your relationship with the Lumbermens Mutual Casualty Co. and any of its officers, directors, agents or employees. Identify all documents relating to any relationship between you and anyone associated with the Lumbermens Mutual Casualty Co.

RESPONSE:

To the best of her knowledge, Ms. Pooler has no relationship(s) with the Lumbermens Mutual Casualty Co. and/or any of its officers, directors, agents or employees.

INTERROGATORY NO. 5: Regarding the use of office space:

- a. Specify the political and non-political activities that took place in the office space. Provide dates for each activity.
- b. Identify any documents that relate or refer to your use of the office space.

RESPONSE:

Non-Political Activity

As indicated in her initial response to the complaint, after her unsuccessful bid for political office in 1986, private citizen Rosemary Pooler secured the referenced space in downtown Syracuse from which she could conduct legal, personal and business, non-political activities. Ms. Pooler conducted legal, personal and business, non-political activities from this office space through the termination of her occupancy on March 31, 1988.

As previously stated in the Response to Interrogatory No. 1, the Commission has no jurisdiction to question Ms. Pooler, or request documents from her, regarding her legal, personal and business, non-political activities, particularly for a time period when she was not a candidate for federal office. Moreover, as Ms. Pooler is a lawyer, information in connection with the activities for client(s) undertaken by her from the referenced office space is privileged.

Political Activity

In addition, through October 26, 1987, private citizen Rosemary Pooler conducted, on average, an hour or two per week worth of "political" activity from the referenced office space. Such activity consisted of writing thank-you letters to 1986 campaign supporters, organizing her 1986 campaign records, and, in the summer and early fall of 1987, making calls and setting up meetings regarding a possible candidacy in 1988.

Between October 27, 1987 (the date Ms. Pooler became a candidate for the 1988 election) and December 31, 1987, her political-related use of the office-space increased, and, correspondingly, the amount of campaign fund expenditures in connection with the office space increased. Similarly, as the political-related use of the office-space further increased from January 1, 1989 through March 31, 1989, the campaign expenditures in connection with the space also increased.

INTERROGATORY NO. 6: Please provide each and every document that concerns the above including, but not limited to those identified.

RESPONSE:

No relevant documentation exists.

Respondent reserves the right to supplement her answers to these questions and requests for documents if additional information come into her possession.

Respectfully submitted,



Leslie J. Kerman
Counsel for Respondent, Rosemary Pooler

**FEDERAL ELECTION COMMISSION
MATTER-UNDER-REVIEW 2677**

**RESPONDENTS: JAMES M. HANLEY, FRIENDS OF
ROSEMARY POOLER AND FRIENDS OF ROSEMARY POOLER '88**

Questions and Request for the Production of Documents to Rosemary Pooler regarding the office space rented in the Syracuse Building from November, 1986 to March, 1988.

RESPONSE

INTERROGATORY NO. 1: State the total amount in expenditures you made in connection with the office space:

- a. State how each expenditure related to the office space.
- b. Provide dates for each expenditure.
- c. Identify all documents that relate to each expenditure.

RESPONSE:

a. After occupying the office space in the Syracuse Building, Rosemary Pooler made periodic determinations of what percentage of her activities in the office encompassed political, as opposed to legal, business or personal activity. She made an independent valuation of such activity and authorized Friends of Rosemary Pooler, her 1986 campaign committee, and Friends of Rosemary Pooler '88, her 1988 campaign committee, to compensate Eagan Real Estate (hereinafter "Eagan") accordingly. These payments were disclosed on appropriate Federal Election Commission reports.

Respondents do not dispute the accuracy of footnote 1 of the Federal Election Commission's "Factual and Legal Analysis" dated April 25, 1989 (hereinafter "footnote 1"). Said footnote outlines the lease and utility payments by either Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 (hereinafter "the Pooler Committees") to Eagan Real Estate (hereinafter "Eagan") during the period of November, 1986 and March 31, 1988.

b. The dates in footnote 1 correspond with the dates on the checks written by the Pooler Committees.

c. Attached are three cancelled checks written by Friends of Rosemary Pooler '88 which are listed in footnote 1. Other cancelled checks listed have not been located to date.

INTERROGATORY NO. 2: State your relationship with the Eagan Real Estate Co. and any of its officers, directors, agents or

employees. Identify all documents relating to any relationship between you and anyone associated with Eagan Real Estate.

RESPONSE:

All contacts with Eagan or its agents occurred through Rosemary Pooler personally.

INTERROGATORY NO. 3: State your relationship with the Lumbermens Mutual Casualty Co. and any of its officers, directors, agents or employees. Identify all documents relating to any relationship between you and anyone associated with the Lumbermens Mutual Casualty Co.

RESPONSE:

No relationship existed between Lumbermens and the Pooler Committees or Mr. Hanley.

INTERROGATORY NO. 4: Identify all officers, directors, employees, staff members and other persons affiliated with your committees who are in any way associated with the Eagan Real Estate Co. or Lumbermens Mutual Casualty Co. or any of their officers, directors, agents or employees.

RESPONSE:

All contacts with Eagan or its agents occurred through Rosemary Pooler personally. No contacts existed directly with Lumbermens and any of its agents.

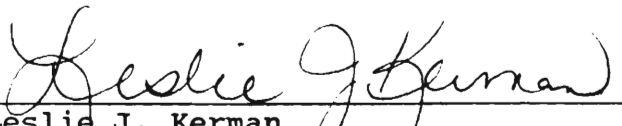
INTERROGATORY NO. 5: Please provide each and every document that concerns the above, including but not limited to those identified in response to the above question.

RESPONSE:

All relevant documents are attached in response to Interrogatory No. 1.

Respondent reserves the right to supplement its answers to these questions and requests for documents if additional information come into its possession.

Respectfully submitted,


Leslie J. Kerman
Counsel for Respondents, James M. Hanley,
Friends of Rosemary Pooler and Friends
of Rosemary Pooler '88

EPSTEIN BECKER & GREEN, P.C.

ATTORNEYS AT LAW

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WASHINGTON, D.C. 20036-6601¹

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PRINCETON, NEW JERSEY 08540-6212
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(214) 480-3143**

**ONE WOODWARD AVENUE
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**515 EAST PARK AVENUE
TALLAHASSEE, FLORIDA 32301-2524
(904) 681-0596**

**510 KING STREET, SUITE 301
ALEXANDRIA, VIRGINIA 22314-3132¹
(703) 684-1204**

September 23, 1988

HAND-DELIVERED

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

RE: MUR 2677

Dear Mr. Noble:

This letter constitutes the response of Friends of Rosemary Pooler and James M. Hanley, as Treasurer, ("Respondents"), to a complaint, MUR 2677, filed by the National Republican Congressional Committee ("NRCC") which alleges that Respondents may have violated the Federal Election Campaign Act of 1971, as amended ("the Act").

I. INTRODUCTION

The complaint alleges both that Respondents have violated the Act by accepting in-kind corporate contributions in the form of discounted rents and that Rosemary Pooler has converted campaign funds to personal use.^{1/} The NRCC bases its politically-motivated allegations on accounts presented by local Syracuse newspapers.

^{1/} The fact that these allegations are mutually exclusive does not deter the NRCC.

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Respondent will demonstrate that these press accounts do not accurately represent the actual arrangements entered into by Rosemary Pooler. Specifically, the newspaper accounts falsely assume that Respondent, not Rosemary Pooler, entered into the referenced rental agreements.

Therefore, Respondents request that the FEC take no action on this matter because Rosemary Pooler acted as a private citizen when she entered into the rental agreements which are the subject matter of this complaint. Further, any concomitant political use of the office space was paid for by Friends of Rosemary Pooler '88, the authorized campaign committee of Rosemary Pooler, in accordance with federal election law requirements.

In this complaint, the NRCC is essentially asking the FEC to deny a private citizen the opportunity to negotiate a reduced rent in an office building on an "as is" basis while deciding whether to seek employment in the private sector or to run for federal office. Then, once the private citizen decided to become a federal candidate, the NRCC requests that the FEC reprimand the candidate for having her campaign committee pay a pro-rated, fair-market value amount of rent for office space which was used, in minor part, to conduct campaign-related activity. Both of these meritless NRCC requests should be expeditiously dismissed.

II. FACTS

In 1986, Rosemary Pooler unsuccessfully challenged incumbent George Wortley in the 27th Congressional District of New York. Subsequent to this election, Rosemary Pooler entered into an oral agreement with Eagan Real Estate, Inc. ("Eagan") which managed an office building at 224 Harrison Street in Syracuse, New York. Under the terms of this agreement, Rosemary Pooler agreed to lease Office 202 on a week-to-week basis and to pay for electrical and janitorial services for the year 1987. Rosemary Pooler entered into this rental agreement at a time when she was no longer a candidate for federal office and continued under the terms of the oral agreement up to October 27, 1987, when she officially became a federal candidate.

After a difficult 1986 election campaign, Rosemary Pooler sought office space in downtown Syracuse as a base from which to explore professional options: she eventually obtained a job in Albany and was appointed a visiting professor at Syracuse University College of Law. Rosemary Pooler also spent time recovering from the demands of the previous election. Respondents do not deny that on occasion

Rosemary Pooler utilized the office space for political purposes; however, the space was leased not by the Friends of Rosemary Pooler, but by Rosemary Pooler personally for nonpolitical purposes.

Rosemary Pooler leased Office 202 on an "as is" basis. This arrangement served to the mutual benefit of both landlord and tenant. Eagan could not have rented the premises at a base rate of \$12 per square foot, the market value, without having done tenant improvements amounting to \$10 to \$15 per square foot. Eagan, therefore, did not have to do any internal repairs until a permanent tenant was found. Since Rosemary Pooler was to pay for the utilities, Eagan did not suffer any losses by renting to Rosemary Pooler.

At all relevant times in 1987 and 1988, Eagan listed the premises for rental. Since Rosemary Pooler's lease was on a week-to-week basis, she would have had to evacuate the premises immediately, if a permanent tenant was found. As of September 12, 1988, Office 202 has not been rented.

When Rosemary Pooler officially became a candidate on October 27, 1987, she began paying \$150.00 per month until the end of the year. This new agreement was voluntarily initiated by Rosemary Pooler. Beginning on January 1, 1988, a new agreement was again negotiated between Rosemary Pooler and Eagan whereby Eagan agreed to give 30 days notice in exchange for a rent of \$250.00 per month plus electricity. Rosemary Pooler terminated her occupancy on March 31, 1988.

III. DISCUSSION

Rosemary Pooler entered into an oral agreement to lease unfurnished and unimproved office space as a private citizen between her 1986 and 1988 campaigns. During this period, she was free to enter into such agreements which concerned her present personal and professional goals and had no bearing on any past or future political activities. As these arrangements were not made by, or for the benefit of, either her 1986 or 1988 campaigns, Rosemary Pooler could not have accepted illegal corporate contributions or converted campaign funds for personal use.

After the 1986 election, Rosemary Pooler remained a public figure in Syracuse. It was, therefore, not unlikely that she would occasionally engage in political activity and might also choose to again seek federal office in 1988. Nonetheless, it would be grossly unfair to require, as the NRCC suggests, that the mere likelihood

that a former candidate will again seek federal office precludes the individual from entering into agreements as a private citizen -- for personal and professional purposes -- because such agreements automatically encompass political activities of a yet unannounced campaign or a former campaign. Under such an interpretation, almost any activity of a public individual such as Rosemary Pooler would be subject to the scrutiny of the FEC and unsubstantiated and politically-motivated charges from the NRCC.

Respondents do not contend that Rosemary Pooler totally disengaged herself from politics for the period of January 1, 1987 to October 27, 1988, nor should they be required to do so: such a bright line distinction between public and private life would be rare. However, Rosemary Pooler's primary focus was nonpolitical and access to office space in Syracuse facilitated her ability to pursue her nonpolitical interests.

To the extent that Rosemary Pooler used the office space in questions for political purposes, her 1988 campaign committee paid Eagan and reported such expenses on its FEC reports. The amount of the utilities and janitorial services constituted a fair market valuation of actual political activity prior to October 23, 1987. Therefore, Friends of Rosemary Pooler '88 paid for these services. In accordance with her continuing good faith efforts to report any political activity in this office, Rosemary Pooler acted responsibly and further modified her rental agreement subsequent to her announcement to again run for federal office. The increase in rent paid to Eagan, which was also paid by Friends of Rosemary Pooler '88, reflected an increase in the valuation of the political activity.

Finally, the NRCC alleges that by renting the office space at below fair market value, Respondent accepted illegal in-kind corporate contributions. Respondents contend that Rosemary Pooler did not rent at below the fair market value of the actual space utilized. As mentioned previously, Eagan could not have leased space to a permanent tenant at the market value of \$12 per square foot without undertaking normal tenant improvement costs. Both parties benefitted from an agreement which contained significant tradeoffs: Rosemary Pooler received a reduced rent for unimproved, austere conditions with a promise of only one week's notice prior to termination while Eagan continued seeking to lease office space, which is still vacant today, and neither suffered any financial losses nor expended any money to improve the office space.

Lawrence M. Noble, Esquire
September 23, 1988
Page 5

IV. CONCLUSION

For the foregoing reasons, Respondents request that the Commission take no further action in connection with this matter.

Respectfully Submitted,

By: Leslie J. Kerman
Leslie J. Kerman
1140 19th Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 861-1877

Attorney for Friends of Rosemary
Pooler and James M. Hanley as
Treasurer

21040332216



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1989 =

Thomas C. Buckel, Jr.
Hancock & Estabrook
Mony Tower I
P.O. Box 4976
Syracuse, New York 13221-4976

RE: MUR 2677
Eagen Real Estate

Dear Mr. Buckel:

Please fill out the enclosed Designation of Counsel Form and return it to the Federal Election Commission--Office of the General Counsel at your earliest possible convenience.

Thank you for your cooperation in this matter and if you have any questions please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lois G. Berner", is written over the typed name.

Lois G. Berner
Associate General Counsel

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HANCOCK & ESTABROOK

JOHN M. HASTINGS, JR.
 W. CARROLL GYNE
 DONALD P. MC CARTHY
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 WILLIAM L. ALLEN, JR.
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 ALAN J. PIERCE
 M. KATHLEEN LYNN
 NANCY F. HORNIK
 MARTHA L. BERRY
 LAURA A. FUSCO
 R. JOHN CLARK
 RENEE L. JAMES
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 LLOYD C. SHAFER
 CAMILLE A. WOLNIK

* ALSO ADMITTED TO FLORIDA BAR

September 27, 1989

Lois G. Lerner
 Associate General Counsel
 Federal Election Commission
 Washington, D.C. 20463

Re: MUR 2677 - Eagan Real Estate

Dear Ms. Lerner:

Enclosed please find the Designation of Counsel Form for the above-referenced matter.

If you have any questions, please contact me.

Sincerely,

HANCOCK & ESTABROOK

Thomas C. Buckel, Jr.

Thomas C. Buckel, Jr.

TCB/jb
 Enclosure

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2677-Eagan Real Estate
NAME OF COUNSEL: Hancock & Estabrook
ADDRESS: Thomas C. Buckel, Jr., Esq.
MONY Tower I, P.O. Box 4976
Syracuse, NY 13221
TELEPHONE: 315-471-3151

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

9-27-89
Date

John E. Puleo
Signature

RESPONDENT'S NAME: Eagan Real Estate
ADDRESS: MONY Tower I, Suite 1600
100 Madison Street
Syracuse, New York 13202
HOME PHONE: 315 4782508
BUSINESS PHONE: (315) 474-7411

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November 9, 1989

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THOMAS C. BUCKEL, JR.
MICHAEL L. CORP

Craig Reffner
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2677
Eagan Real Estate

Dear Mr. Reffner:

Enclosed please find Eagan Real Estate's Answers to
Second Interrogatories for the above-referenced matter.

Very truly yours,

HANCOCK & ESTABROOK

Thomas C. Buckel Jr.
Thomas C. Buckel, Jr.

TCB/jw
Enclosure

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OFFICE OF GENERAL COUNSEL

In Re:

EAGAN REAL ESTATE,
Respondent.

ANSWERS TO SECOND
INTERROGATORIES

Respondent, Eagan Real Estate (hereinafter "Eagan"),
hereby answers the Second Interrogatories as follows:

INTERROGATORIES #1: In regard to the rental payments you
received for the office space occupied by Rosemary Pooler and
her campaign committees, state the amount of rent paid and the
date it was received from:

- (a) Rosemary Pooler, personally;
- (b) Friends of Rosemary Pooler, the
Committee for Rosemary Pooler's 1986 congressional campaign; and
- (c) Friends of Rosemary Pooler '88,
the Committee for Rosemary Pooler's 1988 congressional campaign.

Include any documents that verify the
amounts stated in your answer.

ANSWER #1: The Eagan accounting department does
not keep a record of the payor on rental checks - only a record
that the rent has been paid. Its records only indicate that
under the oral agreement made with Pooler for the year 1987,

the agreed rent was paid. Eagan's records show that "Friends of Pooler" were billed \$250 per month plus electricity for the first three months of 1988 and that payments were made. The premises were vacated on March 31, 1988. Eagan has no records or knowledge as to whether the rent for that period was paid by Pooler personally or by "Friends of Pooler".

INTERROGATORY #2: Describe the customary arrangements that you make with tenants for the payment of rent, including the date that payment be made (i.e., on the first of each month, at the beginning of each week, quarterly intervals, etc.) and the actions taken by you when rental payments are late. Include any documents which support your answers.

ANSWER #2: Tenants operating under a lease are billed monthly and are expected to pay by the tenth of the month billed. If payments are late, contact is made with tenant to rectify the default. If after a period of time Eagan is unsuccessful in collecting rent due, the matter will be, depending on the tenant and circumstance, turned over to our attorney.

INTERROGATORY #3: Were the arrangements and procedures described above, in answer to interrogatory No. 2, followed with regard to the tenancy of Rosemary Pooler and her committee. If not, describe the arrangements and procedures that actually were followed.

ANSWER #3:

Yes. There were no delinquencies.

Dated: November 9, 1989

Eagan Real Estate

By: _____

MONY Tower I
Syracuse, New York 13202

21040332223

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)

Rosemary Pooler)

MUR 2677

Friends of Rosemary Pooler and)

Sharon Sherman, as treasurer)

Friends of Rosemary Pooler '88 and)

James M. Hanley, as treasurer)

Eagen Real Estate Co.)

Lumbermens Mutual Casualty Co.)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter arose from a complaint filed by the National Republican Congressional Committee ("NRCC") alleging that Rosemary Pooler, a 1986 and 1988 candidate for U.S. Congress, and her 1986 and 1988 Campaign Committees violated Section 441b(a) of the Federal Election Campaign Act, as amended (the "Act"), by renting office space at below market value. The office in question is located in a building owned by Lumbermens Mutual Casualty Company ("Lumbermens") and managed by Eagen Real Estate Company ("Eagen"). The complaint also alleged that Rosemary Pooler violated Section 439a of the Act by utilizing this office space for her personal use while her 1986 and 1988 Committees paid the rent. After reviewing the allegations in the complaint and the responses received thereto the Commission found reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer (known collectively as the "1986 Committee"), Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer (known collectively as the "1988 Committee"), Lumbermens, and Eagen violated 2 U.S.C. § 441b(a). The Commission, at that time, also determined to defer taking action regarding the allegation that Rosemary Pooler violated Section 439a of the Act.

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A. Section 441b(a) Violation

The office at issue here, known as Area 242 or Office 202, measures 42' x 12', approximately 500 square feet, and is located in the Syracuse Building, at 224 Harrison Street, Syracuse, New York. Rosemary Pooler and her 1986 and 1988 Campaign Committees occupied Office 202 over a fifteen month period, under two different leases. The first lease, an oral lease, was in effect from January 1, 1987 through December 31, 1987. Under the terms

of this lease, no improvements would be made to the office and the tenant would be afforded one week's notice to vacate and would pay a rental charge of \$150.00 per month, excluding electricity. The second lease, beginning on January 1, 1988, provided for one month's notice to vacate and a monthly rental fee of \$250.00, excluding electricity.¹ This lease, which was reduced to writing on March 15, 1988, was terminated on March 31, 1988, when Rosemary Pooler and the 1988 Committee vacated Office 202. Respondents Eagen and Lumbermens state that they received approximately \$2,038 in rent and related payments over the course of these two leases.²

In considering whether there has been a violation of 2 U.S.C. § 441b(a), the Commission must determine whether Rosemary Pooler and her 1986 and 1988 Committees were charged a usual and normal rent by Lumbermens and Eagen and whether such rent actually

1. These figures were provided by Rosemary Pooler and her 1986 and 1988 Committees. The figures provided by Respondents Lumbermens and Eagen disclose that the rent charged during the first lease was \$3.25 per square foot, which equates to approximately \$164.00 per month, and \$5.13 per square foot during the second lease, which equates to \$258.00 per month.

2. A review of respondents' answers to the Commission's interrogatories discloses that \$1,822.71 was paid for rent and \$214.85 was paid for related costs as set forth below:

Friends of Rosemary Pooler (the 1986 campaign committee)

June 11, 1987	\$497.89
August 19, 1987	\$ 21.75
November 4, 1987	\$253.07
Subtotal	\$772.71

Friends of Rosemary Pooler '88

December 28, 1987	\$300.00
March 1, 1988 (electric)	\$173.72
March 15, 1988	\$750.00
May 2, 1988 (electric)	\$ 41.13
Subtotal	\$1,264.85

Total	\$2,037.56
-------	------------

was paid. Both Lumbermens and Eagen contend that the rent charged for Office 202 throughout the entire occupancy period represented its fair market value given the following factors: 1) Office 202 was unimproved which allowed Lumbermens to keep its overhead costs down to \$1.90 per square foot rather than the usual \$10.00 to \$15.00 per square foot for improved office space; 2) the first lease provided for one week's notice to vacate and the second lease, which called for higher monthly rental payments, provided for one month's notice; 3) Office 202 was small and had a partition in it which made it unattractive; and 4) Office 202 was vacant at the time the first lease began in January 1987, and the opportunity of renting it, even at a reduced rate, would provide some revenue. Additionally, Eagen cites three other instances where a reduced rent was charged for unimproved office space in the Syracuse Building. See Attachment A. Taking into consideration all of the above factors the rent to be assessed for Office 202 appears to meet the "usual and normal charge" requirement of the Act.

The evidence on hand, however, reveals that the rent provisions of the leases were not enforced. The total rent actually paid amounts to less than that allegedly charged for the office space. Under the terms of the leases, the entire amount of rent charged totaled \$2,550.00. However, the actual rental payments made total only \$1,822.71, leaving \$727.29 in uncollected and unpaid rent. In addition, it appears that Lumbermens and Eagen failed to make timely collection of the rent. In its answer to the Commission's second set of interrogatories, Eagen asserted that its normal business practice is to make tenants pay rent on a monthly basis and to require full payment by the tenth of the

month. With regard to the occupancy of Office 202 by Rosemary Pooler and her 1986 and 1988 Committees, this normal business practice was not followed. The cancelled checks reveal that rent was actually paid on an irregular basis. The rent for the months of November and December 1987, for example, was not paid until December 28, 1987, and rent for the months of January, February and March of 1988 was not tendered until March 15, 1988. The evidence adduced thus demonstrates that Lumbermens and Eagen, both corporations, contributed to Rosemary Pooler in violation of 2 U.S.C. § 441b(a).

B. Section 439a Violation

The complaint in this matter also alleged that Rosemary Pooler used Office 202 for personal use, including her law practice, while the 1986 and 1988 Committees paid the rent. In her response to the Commission's discovery requests, Pooler asserts that from January 1, 1987 through October 21, 1987, the date she declared for the 1988 congressional election, she utilized Office 202 for both her personal and professional interests and for other matters related to winding up her 1986 campaign. Pooler states that the rent paid by the 1986 Committee during this period reflects the pro rata amount of time in which Office 202 was used for matters relating to her unsuccessful 1986 candidacy. However, in response to the Commission's interrogatories, Pooler refuses to disclose either the amount of time in which she used the office for non-campaign purposes or how much rent she personally paid. She bases her refusal to disclose such information on the grounds that since she is a lawyer, and since the information sought by the Commission relates to her law practice, such information is protected by the attorney-client

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privilege.³

Under 2 U.S.C. § 439a, funds received by a candidate as contributions, which are in excess of the amount necessary to defray the candidate's expenditures, may not be converted by the candidate to any personal use. It is apparent from information presently available that during the time Rosemary Pooler and her 1986 and 1988 Committees occupied Office 202, she did not pay any rent from her own funds. The cancelled checks, provided by the 1986 and 1988 Committees, total \$1,822.71 for rent, which is the exact amount of money that Lumbers and Eagen acknowledge having received for the entire occupancy of Office 202. In light of the foregoing, this Office recommends that the Commission find reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a.

III. CONCILIATION REQUESTS

3. Respondent Pooler's assertion of the attorney-client privilege is simply without merit here. The attorney-client privilege is intended to protect communications made between an attorney and a client for the purpose of obtaining and rendering legal advice. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). The policy behind the privilege is to insure confidence and allow for complete disclosure of information. The privilege only protects those matters which are intended by the client to be confidential; peripheral matters, not intended to be confidential, are not protected. The information sought by the Federal Election Commission in this matter relates to the amount of time Rosemary Pooler used Office 202 for non-campaign purposes. That information does not relate to any privileged communications made to Rosemary Pooler by her clients; therefore the attorney-client privilege does not apply.

IV. RECOMMENDATIONS

1. Find reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a.
2. _____
3. _____
4. _____
5. Approve the proposed letters.
6. Approve the Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

Date 3/28/90

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Discovery Responses and requests for pre-probable cause conciliation
2. Proposed letters
3. Factual and Legal Analysis
4. Proposed conciliation agreements

Staff Assigned: Craig Douglas Reffner

21040832230



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *DH*
COMMISSION SECRETARY

DATE: APRIL 2, 1990

SUBJECT: MUR 2677 - GENERAL COUNSEL'S REPORT
DATED MARCH 28, 1990

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

Attachment:
Copy of Vote Sheet

21040332231



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DELORES HARRIS
COMMISSION SECRETARY

DATE: APRIL 2, 1990

SUBJECT: MUR 2677 - GENERAL COUNSEL'S REPORT
DATED MARCH 28, 1990

The above-captioned document was circulated to the
Commission on Thursday, March 29, 1990 at 4:00 p.m..

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

Commissioner Aikens	_____
Commissioner Elliott	_____XXX_____
Commissioner Josefiak	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Thomas	_____XXX_____

This matter will be placed on the meeting agenda
for APRIL 10, 1990.

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



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *OK*
COMMISSION SECRETARY

DATE: APRIL 3, 1990

SUBJECT: MUR 2677 - GENERAL COUNSEL'S REPORT
DATED MARCH 28, 1990

The above-captioned document was circulated to the
Commission on Thursday, March 29, 1990 at 4:00 p.m..

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

Commissioner Aikens	_____
Commissioner Elliott	XXX
Commissioner Josefiak	_____
Commissioner McDonald	_____
Commissioner McGarry	XXX
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda
for APRIL 10, 1990.

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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Rosemary Pooler) MUR 2677
Friends of Rosemary Pooler and)
Sharon Sherman, as treasurer)
Friends of Rosemary Pooler '88 and)
James M. Hanley, as treasurer)
Eagen Real Estate Co.)
Lumbermens Mutual Casualty Co.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 10, 1990, do hereby certify that the Commission took the following actions in MUR 2677:

1. Failed in a vote of 3-3 to pass a motion to
 - a) Reject the General Counsel's recommendation to find reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a.
 - b) Enter into conciliation prior to a finding of probable cause to believe with Lumbermens Mutual Casualty Company.
 - c) Enter into conciliation prior to a finding of probable cause to believe with Eagen Real Estate Company.
 - d)

(continued)

- e) Direct the Office of General Counsel to proceed to the next stage of the enforcement process with respect to the campaign committees.
- f) Direct the Office of General Counsel to send the appropriate letters pursuant to the above-noted actions.

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

2. Decided by a vote of 6-0 to reconsider the prior vote.

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

(continued)

21040332235

3. Decided by a vote of 5-1 to

- a) Reject the General Counsel's recommendation to find reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a.
- b) Enter into conciliation prior to a finding of probable cause to believe with Lumbermens Mutual Casualty Company.
- c) Enter into conciliation prior to a finding of probable cause to believe with Eagen Real Estate Company.
- d)
- e) Direct the Office of General Counsel to proceed to the next stage of the enforcement process against the two campaign committees.
- f) Direct the Office of General Counsel to send appropriate letters pursuant to the above-noted actions.

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

Attest:

4-11-90
Date

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

0104033236



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 17, 1990

Thomas C. Buckel, Jr., Esq.
Hancock & Estabrook
Mony Tower I
P. O. Box 4976
Syracuse, New York 13221-4976

RE: MUR 2677
Eagen Real Estate Co.

Dear Mr. Buckel:

On April 18, 1989, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441b(a). At your request, on April 10, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lerner", is written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

9104033237



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 17, 1990

Daniel J. Swillinger, Esq.
1000 Thomas Jefferson Street, N.W.
Suite 600
Washington, D.C. 20007

RE: MUR 2677
Lumbermens Mutual Casualty Company

Dear Mr. Swillinger:

On April 18, 1989, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441b(a). At your request, on April 10, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

21040332238



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 27, 1990

Leslie J. Kerman, Esq.
Epstein Becker & Green
1140 19th Street, N.W.
Washington, D.C. 20036-6601

RE: MUR 2677
Rosemary Pooler
Friends of Rosemary Pooler and
Sharon Sherman, as treasurer
Friends of Rosemary Pooler '88
and James m. Hanley, as treasurer

Dear Ms. Kerman:

On August 31, 1988, the Federal Election Commission (the "Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On April 18, 1989, the Federal Election Commission found reason to believe that Rosemary Pooler violated 2 U.S.C. § 441b(a), Friends of Rosemary Pooler and Sharon Sherman, as treasurer, violated 2 U.S.C. § 441b(a), and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a). Subsequently, on April 10, 1990, the Commission found, on the basis of information in the complaint, and information provided by your clients, that there is no reason to believe Rosemary Pooler violated 2 U.S.C. § 439a. Accordingly, with regard to the Section 441b(a) violations, the Commission is moving on to the next stage of the enforcement process.

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.

9104032239

Leslie J. Kerman, Esq.
Page 2

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

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

21040332240



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 14, 1990

Daniel J. Swillinger, Esq.
1000 Thomas Jefferson Street, N.W.
Suite 600
Washington, D.C. 20007

RE: MUR 2677
Lumbermens Mutual Insurance Co.

Dear Mr. Swillinger:

On April 17, 1990, you were notified that, at your request, the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lisa E. Klein
Assistant General Counsel

91040332241



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 14, 1990

Thomas C. Buckel, Jr., Esq.
Hancock & Estabrook
P.O. Box 4976
Syracuse, NY 13221-4976

RE: MUR 2677
Eagen Real Estate Co.

Dear Mr. Buckel:

On April 17, 1990, you were notified that, at your request, the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lisa E. Klein
Assistant General Counsel

21040332242

06-6265

RECEIVED
FEDERAL ELECTION COMMISSION

90 MAY 17 PM 1:09

LAW OFFICES
MALONEY & BURCH
1100 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
Phone (202) 293-1414
Fax (202) 293-1702

May 16, 1990

Craig Reffner, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2677
Lumberman's Mutual

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 17 PM 3:30

Dear Mr. Reffner:

Please change your records in the above referenced matter to reflect my new law firm name, address and telephone number.

Thank you,


Daniel J. Swillinger

0104032243



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 17, 1990

Daniel J. Swillinger, Esq.
1000 Thomas Jefferson Street, N.W.
Suite 600
Washington, D.C. 20007

RE: MUR 2677
Lumbermens Mutual Casualty Company

Dear Mr. Swillinger:

This letter will confirm your telephone conversation on May 15, 1990, with Craig Reffner of the Office of the General Counsel, regarding the above referenced matter. At your request, this Office has agreed to meet with you and your client at the Federal Election Commission, on Wednesday, June 6, 1990, at 2:30 p.m., to discuss the Commission's conciliation proposal.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Lois G. Lerner
[Signature]

1104033344

0666494

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 11 PM 12:08

LAW OFFICES
MALONEY & BURCH
1100 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
Phone (202) 293-1414
Fax (202) 293-1702

June 7, 1990

Ms. Lisa Klein
Mr. Craig Reffner
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2677

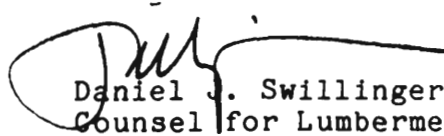
Dear Ms. Klein and Mr. Reffner:

Thank you for meeting with Mr. Conway and me yesterday. As we expressed to you then, it continues to be the view of Lumbermens Mutual Casualty Co. that it has not violated the FECA.

Lumbermens does not believe that it may be held liable as a matter of law for the unauthorized acts of its agent, who, in effect, stole from the company. As a matter of corporate principle and policy, Lumbermens will not admit to a violation for which it is not responsible.

I therefore request on behalf of Lumbermens that, having found reason to believe, the Commission take no further action and dismiss this matter.

Sincerely,


Daniel J. Swillinger
Counsel for Lumbermens
Mutual Casualty Co.

cc: John K. Conway, Esquire
DJS/dmr

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
90 JUN 11 PM 1:08

21040332245

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Rosemary Pooler) MUR 2677
Friends of Rosemary Pooler and)
Sharon Sherman, as treasurer)
Friends of Rosemary Pooler '88)
and James M. Hanley, as treasurer)
Eagan Real Estate Company)
Lumbermens Mutual Casualty Company)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 27, 1990, the Commission decided by a vote of 5-0 to take the following actions in MUR 2677:

1. Deny the request of Lumbermens Mutual Casualty Company to take no further action, as recommended in the General Counsel's Report dated June 22, 1990.
2. Approve the letter attached to the General Counsel's Report dated June 22, 1990.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens did not cast a vote.

Attest:

6-27-90
Date

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

Received in the Secretariat:	Mon., June 25, 1990	11:19 a.m.
Circulated to the Commission:	Mon., June 25, 1990	4:00 p.m.
Deadline for vote:	Wed., June 27, 1990	4:00 p.m.

dr

21040332246

90 JUN 25 AM 11:19

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Rosemary Pooler

Friends of Rosemary Pooler and
Sharon Sherman, as treasurer

Friends of Rosemary Pooler '88
and James M. Hanley, as treasurer

Eagan Real Estate Company

Lumbermens Mutual Casualty Company

SENSITIVE

MUR 2677

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 18, 1989, the Commission found reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer, Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, Eagan Real Estate Company and Lumbermens Mutual Casualty Company each violated 2 U.S.C. § 441b(a), in connection with the rental of office space in a building managed by Eagan and owned by Lumbermens.

The Commission, thereafter, on April 10, 1990, found no reason to believe that Rosemary Pooler violated Section 439a of the Act, but directed the Office of the General Counsel to proceed against the two campaign Committees with regard to the Section 441b(a) violations.

10403247

II. DISCUSSION

91040332248
 . On June 11, 1990, this Office received a
letter from counsel confirming his client's position and

requesting that the Commission take no further action.

Additionally, on June 11, 1990, counsel for Respondents Rosemary Pooler and the 1986 and 1988 Committees stated in a phone conversation with staff of this Office that those three Respondents would not request pre-probable cause conciliation. In light of the foregoing, this Office is prepared to proceed to the next stage of the enforcement process with respect to all Respondents. Accordingly, this Office recommends that the Commission deny Respondent Lumbermens' request to take no further action.

III. RECOMMENDATIONS

1. Deny the request of Lumbermens Mutual Casualty Company to take no further action.

2. Approve the attached letter.

Lawrence M. Noble
General Counsel

Date

6/22/90

BY:

Lois G. Lerner
Associate General Counsel

Attachments

1. Request of Lumbermens
2. Proposed letter

Staff assigned: Craig Douglas Reffner

21040332249



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 2, 1990

Daniel J. Swillinger, Esq.
Maloney & Burch
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2677
Lumbermens Mutual Casualty Co.

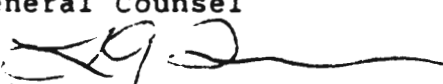
Dear Mr. Swillinger:

On April 17, 1990, you were notified that the Federal Election Commission had determined, at your request, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Subsequently, on June 7, 1990, you requested, on behalf of your client, that the Commission take no further action in this matter. On June 27, 1990, the Commission considered your latest request and determined to deny it. Therefore, inasmuch as the time period for pre-probable cause conciliation has expired, the Commission is moving to the next stage of the enforcement process.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 AUG -9 AM 7:26

SENSITIVE

August 8, 1990

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel *LM*

SUBJECT: MUR 2677
Rosemary Pooler
Friends of Rosemary Pooler and Sharon Sherman, as
treasurer
Friends of Rosemary Pooler '88 and James M. Hanley, as
treasurer
Lumbermens Mutual Casualty Company
Eagan Real Estate Company

Attached for the Commission's review are the briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed on August 31, 1990. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs (3)
2. Letters to respondents (3)

010403251



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1990

Leslie J. Kerman, Esq.
Epstein Becker & Green, P.C.
1140 19th Street, N.W.
Washington, D.C. 20036-6601

RE: MUR 2677
Rosemary Pooler
Friends of Rosemary Pooler and
Sharon Sherman, as treasurer
Friends of Rosemary Pooler '88 and
James M. Hanley, as treasurer

Dear Ms. Kerman:

Based on a complaint filed with the Federal Election Commission on August 24, 1988, and information supplied by you, on behalf of your clients, the Commission, on April 18, 1989, found that there was reason to believe your clients, 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 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.

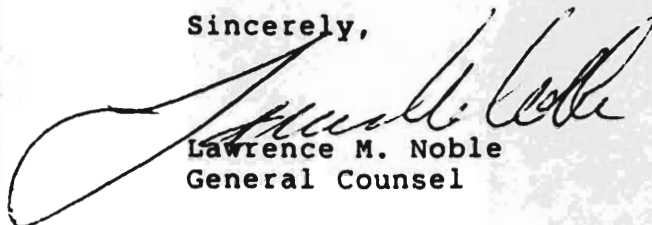
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Leslie J. Kerman, Esq.
MUR 2677
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 Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

1140332253

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Rosemary Pooler) MUR 2677
Friends of Rosemary Pooler and)
Sharon Sherman, as treasurer)
Friends of Rosemary Pooler '88 and)
James M. Hanley, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 18, 1989, the Commission found reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer (the "1986 Committee"), and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer (the "1988 Committee"), (referred to collectively as "the Tenants") violated 2 U.S.C. § 441b(a). The basis for the Commission's finding concerned the Tenants' rental of office space at below market value. The office space in question is located in a building owned by Lumbermens Mutual Casualty Company ("Lumbermens") and managed by Eagan Real Estate Company ("Eagan") (collectively known as the "Landlords"). The Tenants assert that initially the office space was not rented for any political purpose but for Rosemary Pooler's personal interests and as such, no corporate contribution could have been received. With regard to any later political use of the office, the Tenants further argue that the lease in question was commercially reasonable.

II. ANALYSIS

Section 441b(a) of the Act prohibits corporations from

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making contributions or expenditures from their general treasury funds in connection with any federal election and also prohibits federal candidates and their committees from accepting such contributions. The term "contribution or expenditure" has been defined to include any direct or indirect gift or anything of value to any candidate or political committee. 2 U.S.C.

§ 441b(a)(2). Commission regulations explain that "anything of value" includes all in-kind contributions, which occur when any goods or services are provided without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A).

At issue here is whether the Tenants' rental arrangement with the Landlords resulted in the acceptance of an in-kind corporate contribution. The available information clearly establishes that the full amount of rent payable during the rental period was not collected. Additionally, the evidence shows that of the rent the Tenants paid, the Landlords did not collect it in a timely manner. Information provided by the Tenants shows that they occupied Office 202 in the Syracuse Building over a fifteen (15) month period, under two different leases. The first lease, an oral lease, was in effect from January 1, 1987, through December 31, 1987, and provided for a monthly rental charge of one hundred and fifty dollars (\$150.00), excluding electricity. The second lease, beginning on January 1, 1988, provided for a monthly rental fee of two hundred and fifty dollars (\$250.00), excluding electricity. This latter lease was terminated on March 31, 1988, when the Tenants vacated Office 202. In total, under the terms of

these leases, the Tenants should have paid two thousand and five hundred and fifty dollars (\$2,550.00) in rent. The Landlords acknowledge, however, receiving only one thousand and eight hundred and twenty-two dollars and seventy-one cents (\$1,822.71) in rent, a figure consistent with the 1986 and 1988 Committees' financial disclosure reports. In short, the evidence shows that the Tenants failed to pay seven hundred and twenty-seven dollars and twenty-one cents (\$727.21) in rent.

With regard to the timely payment of rent, the Landlords' policy at the Syracuse Building is to have tenants pay rent on a monthly basis and to require full payment by the tenth of the month. Contrary to this policy, the Tenants' rent for the months of November and December 1987 was not paid until December 28, 1987, while the rent for the months of January, February and March of 1988 was not tendered until March 15, 1988. No evidence has been submitted to show that the Landlords either demanded full and timely payment from the Tenants or permitted other tenants in the same building to make incomplete and late rental payments as a normal course of business.

Finally, the available evidence also makes clear that the Tenants used the office space over the fifteen (15) month occupancy for political purposes. Rosemary Pooler has acknowledged that from January 1987 until October 27, 1987, the date she announced her candidacy for the 1988 congressional election, Office 202 was used to wind-up her unsuccessful 1986 campaign. Ms. Pooler has further stated that after October 27, 1987, the office space was utilized over for the next five (5)

0104032256

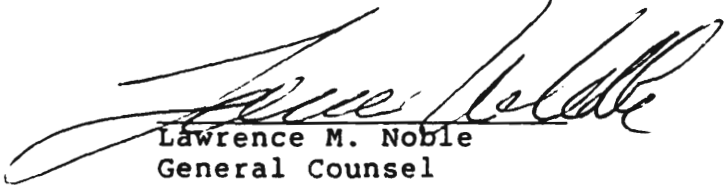
months to prepare for her 1988 campaign. Additionally, financial disclosure reports filed by both the 1986 and 1988 Committees show a series of rental payments made to Eagan during the Tenants' fifteen (15) month occupancy of Office 202. Accordingly, there is probable cause to believe that Rosemary Pooler and the 1986 Committee and the 1988 Committee violated 2 U.S.C. § 441b(a).

III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer, and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, violated 2 U.S.C. § 441b(a).

Date

8/8/70


Lawrence M. Noble
General Counsel

7 2 2 3 3 0 4 0 1 1



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1990

Thomas C. Buckel, Jr., Esq.
Hancock & Estabrook
Mony Tower I
P. O. Box 4976
Syracuse, New York 13221-4976

RE: MUR 2677
Eagan Real Estate Company

Dear Mr. Buckel:

Based on a complaint filed with the Federal Election Commission on August 24, 1988, and information supplied by you, on behalf of your client, the Commission, on April 18, 1989, found that there was reason to believe your client, 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 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.

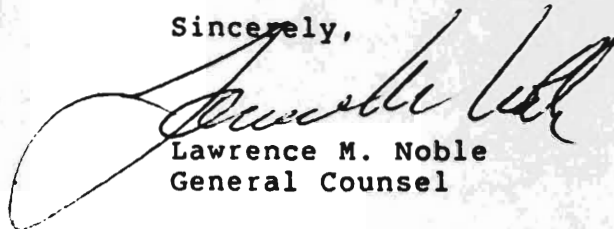
1040332258

Thomas C. Buckel, Jr., Esq.
MUR 2677
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 Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

91040832259

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Eagan Real Estate Company) MUR 2677

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 18, 1989, the Commission found reason to believe that Eagan Real Estate Company ("Eagan") violated 2 U.S.C. § 441b(a). The basis for the Commission's finding concerned the rental of office space at below market value to Rosemary Pooler, a federal candidate, and her 1986 and 1988 Campaign Committees (collectively known as "the Tenants"). Eagan, who is the managing and leasing agent for the building where the office in question is located, asserts that it leased office space to Ms. Pooler in her individual capacity and was not aware that the Tenants used the office for political purposes. Additionally, Eagan has also argued that Rosemary Pooler's lease was commercially reasonable.

II. ANALYSIS

Section 441b(a) of the Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any federal election. The term "contribution or expenditure" has been defined to include any direct or indirect gift or anything of value to any candidate or political committee. 2 U.S.C. § 441b(a)(2). Commission regulations explain that "anything of value" includes all in-kind contributions, which occur when any goods or services are provided without charge or at a charge which is less than the usual and

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normal charge for such goods or services. 11 C.F.R.
§ 100.7(a)(1)(iii)(A).

At issue here is whether the rental arrangement with the Tenants resulted in an in-kind corporate contribution. The available information clearly establishes that the full amount of rent payable during the rental period was not received. Additionally, the evidence shows that the rental payments actually made were not collected in a timely manner. Information provided by Eagan shows that the Tenants occupied Office 202 in the Syracuse Building over a fifteen (15) month period, under two different leases. The first lease, an oral lease, was in effect from January 1, 1987, through December 31, 1987, and provided for a monthly rental charge of one hundred and fifty dollars (\$150.00), excluding electricity. The second lease, beginning on January 1, 1988, provided for a monthly rental fee of two hundred and fifty dollars (\$250.00), excluding electricity. This latter lease was terminated on March 31, 1988, when the Tenants vacated Office 202. In total, under the terms of the Tenants' leases, two thousand and five hundred and fifty dollars (\$2,550.00) in rent should have been collected. However, only one thousand and eight hundred and twenty-two dollars and seventy-one cents (\$1,822.71) in rent was actually received, leaving seven hundred and twenty-seven dollars and twenty-nine cents (\$727.29) in uncollected rent.

With regard to the timely collection of rent, Eagan stated that the policy at the Syracuse Building is to have tenants pay rent on a monthly basis and to require full payment by the tenth

of the month. Contrary to this policy, the Tenants' rent for the months of November and December 1987 was not paid until December 28, 1987, while the rent for the months of January, February and March of 1988 was not tendered until March 15, 1988. No evidence has been submitted to show that full and timely payment was demanded from the Tenants or that other tenants in the same building were permitted to make incomplete and late rental payments as a normal course of business.

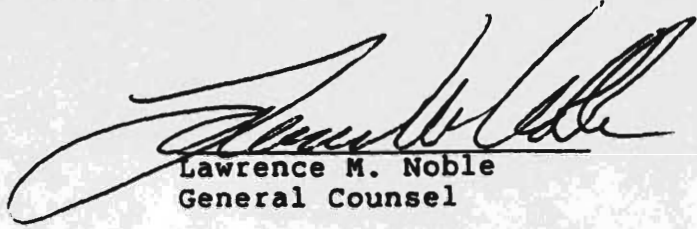
Finally, the available evidence clearly shows that Eagan was aware that it was renting office space to the Tenants and that the office in question would be used for political purposes. Financial disclosure reports filed by 1986 and 1988 Committees show Eagan's acceptance of rent checks, drawn on both the Committees' bank accounts, over the fifteen (15) month period that the Tenants occupied Office 202. Additionally, in a 1988 news story concerning Ms. Pooler's lease, the property manager at the Syracuse building, John McAuliffe, an employee of Eagan, was quoted as saying: "We often rent spaces out for political purposes. You rent them out either as a contribution or as a minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post Standard, August 19, 1988. Accordingly, there is probable cause to believe that Eagan Real Estate Company violated 2 U.S.C. § 441b(a).

III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe that Eagan Real Estate Company violated 2 U.S.C. § 441b(a).

Date

2/2/90


Lawrence M. Noble
General Counsel

21040832263



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1990

Daniel J. Swillinger, Esq.
Maloney & Burch
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2677
Lumbermens Mutual Casualty Company

Dear Mr. Swillinger:

Based on a complaint filed with the Federal Election Commission on August 24, 1988, and information supplied by you, on behalf of your client, the Commission, on April 18, 1989, found that there was reason to believe your client, 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 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.

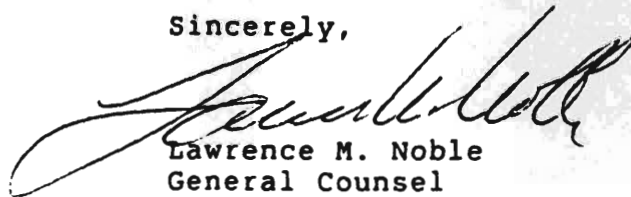
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Daniel J. Swillinger, Esq.
MUR 2677
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 Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", is written over the typed name.

Lawrence M. Noble
General Counsel

Enclosure
Brief

21040332265

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2677
Lumbermens Mutual Casualty Company)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 18, 1989, the Commission found reason to believe that Lumbermens Mutual Casualty Company ("Lumbermens") violated 2 U.S.C. § 441b(a). The basis for the Commission's finding concerned the rental of office space at below market value to Rosemary Pooler, a federal candidate, and her 1986 and 1988 Campaign Committees (collectively referred to as "the Tenants"). Lumbermens, who owns the building where the office space in question is located, asserts that the Tenants' lease was commercially reasonable and also argues that if an in-kind corporate contribution was made, then the only contributor was Eagan Real Estate Company, Lumbermens's leasing agent who arranged for Ms. Pooler's lease and collected her rent.

II. ANALYSIS

Section 441b(a) of the Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any federal election. The term "contribution or expenditure" has been defined to include any direct or indirect gift or anything of value to any candidate or political committee. 2 U.S.C. § 441b(a)(2). Commission regulations explain that "anything of value" includes all in-kind contributions, which occur when any goods or services are provided

without charge or at a charge which is less than the usual and normal charge for such goods or services. 11 C.F.R.

§ 100.7(a)(1)(iii)(A).

At issue here is whether the rental arrangement with the Tenants resulted in an in-kind corporate contribution. The available information clearly establishes that the full amount of rent payable during the rental period was not received. Additionally, the evidence shows that the rental payments actually made were not collected in a timely manner. Information provided by Lumbermens shows that the Tenants occupied Office 202 in the Syracuse Building over a fifteen (15) month period, under two different leases. The first lease, an oral lease, was in effect from January 1, 1987, through December 31, 1987, and provided for a monthly rental charge of one hundred and fifty dollars (\$150.00), excluding electricity. The second lease, beginning on January 1, 1988, provided for a monthly rental fee of two hundred and fifty dollars (\$250.00), excluding electricity. This latter lease was terminated on March 31, 1988, when the Tenants vacated Office 202. In total, under the terms of the Tenants' leases, two thousand and five hundred and fifty dollars (\$2,550.00) in rent should have been collected. Only one thousand and eight hundred and twenty-two dollars and seventy-one cents (\$1,822.71) in rent was actually received, leaving seven hundred and twenty-seven dollars and twenty-nine cents (\$727.29) in uncollected rent.

With regard to the timely collection of rent, the policy at the Syracuse Building is to have tenants pay rent on a monthly basis and to require full payment by the tenth of the month.

Contrary to this policy, the Tenants' rent for the months of November and December 1987 was not paid until December 28, 1987, while the rent for the months of January, February and March of 1988 was not tendered until March 15, 1988. No evidence has been submitted to show that full and timely payment was demanded from the Tenants or that other tenants in the same building were permitted to make incomplete and late rental payments as a normal course of business.¹

Finally, Lumbermens, as the owner of the Syracuse Building, is legally responsible for the actions of its leasing-agent, Eagan Real Estate. A principal-agent relationship is consensual in nature, in that the principal must manifest a willingness to have the agent act for him and consent to the agent's acts. Restatement (Second) of Agency §§ 1 and 12. Accordingly, if the agent is permitted to act for the principal, then he or she may alter the principal's relations in the same manner as if the principal had acted himself or herself. Id at § 12. Lumbermens admits that it has a principal-agent relationship with Eagan Real Estate, as defined by a 1983 agency agreement. Under the terms of this agreement, Lumbermens delegated to its agent the power to negotiate leases, collect rent and "[p]rosecute suits for rental

1. The failure to collect the total amount of rent charged to the Tenants in a timely manner may be attributable to the fact that the office was used for political purposes. In a 1988 news story concerning Ms. Pooler's lease, the property manager at the Syracuse Building, John McAuliffe, an employee of Eagan Real Estate, was quoted as saying: "We often rent spaces out for political purposes. You rent them out either as a contribution or as a minimum rent. I don't know anybody in politics who pays normal rent." Syracuse Post Standard, August 19, 1988.

and default" at the Syracuse Building. Thus, as owner of the building, Lumbermens is responsible for the activity undertaken by its agent, Eagan, in pursuit of it delegated authority.

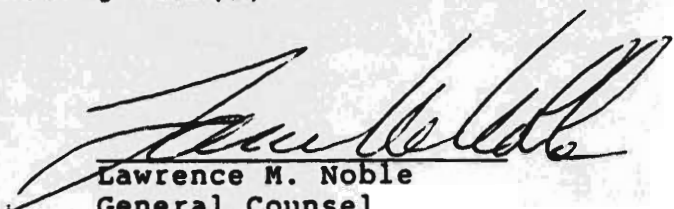
Accordingly, there is probable cause to believe that Lumbermens Mutual Casualty Company violated 2 U.S.C. § 441b(a).

III. GENERAL COUNSEL'S RECOMMENDATIONS

Find probable cause to believe that Lumbermens Mutual Casualty Company violated 2 U.S.C. § 441b(a).

Date

8/3/90


Lawrence M. Noble
General Counsel

91040332269

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)

Rosemary Pooler)

MUR 2677

Friends of Rosemary Pooler and)
Sharon Sherman, as treasurer)

Friends of Rosemary Pooler '88 and)
James M. Hanley, as treasurer)

Lumbermens Mutual Casualty Company)

Eagan Real Estate Company)

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to all the respondents, based on the assessment of the information presently available.

Date

8/8/90


Lawrence M. Noble
General Counsel

21040332270



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 21, 1990

Daniel J. Swillinger, Esq.
Maloney & Burch
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036-4101

RE: MUR 2677
Lumbermens Mutual Casualty Company

Dear Mr. Swillinger:

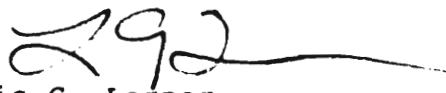
This is in response to your letter dated August 10, 1990, which we received on August 14, 1990, requesting an extension of 20 days to respond to the General Counsel's Brief.

Considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations, I cannot grant your full request, but can only agree to a 15 day extension. Accordingly, your response is due by the close of business on September 10, 1990.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

21040332271

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HANCOCK & ESTABROOK

RECEIVED
FEDERAL ELECTION COMMISSION

COUNSELORS AT LAW

MONTY TOWER I

P.O. BOX 4976

SYRACUSE, NEW YORK 13221-4976

TELEPHONE (315) 471-3151

TELECOPIER (315) 471-3157

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ALBANY, NEW YORK 12205

TELEPHONE (518) 455-7660

TELECOPIER (518) 455-7731

9 PAYNE STREET

HAMILTON, NEW YORK 13346

TELEPHONE (518) 824-1030

TELECOPIER (518) 824-1044

90 AUG 24 AM 9:54

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A. VAN W. HANCOCK
CHARLES H. BASSETT
DAVID T. GARVEY
COUNSEL

JOHN L. MURAD, JR.
KENNETH P. HOLDEN
STEPHEN A. DONATO
MARK J. SCHULTE
ALAN J. PIERCE
NANCY F. HORNIK
MARTHA L. BERRY
LAURA A. FUSCO
R. JOHN CLARK
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WINTHROP H. THURLOW
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ELIZABETH A. SALVAGNO
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CAMILLE A. WOLNIR
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WILLIAM L. ALLEN, JR.
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DAVID W. LARRISON
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GREGORY R. THORNTON
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JAMES E. SPARKES
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GERALD P. STACH
JAMES E. HUGHES
JEFFREY S. ANDRUS
JANET D. CALLAHAN
THOMAS C. BUCKEL, JR.
MICHAEL L. CORP
DANIEL S. BERMAN
JOHN T. MC CANN
STEVEN R. SHAW

August 21, 1990

Craig Reffner, Esq.
Federal Elections Commission
Washington D.C. 20463

RE: Eagan Real Estate Co.; Your No. MUR 2677

Dear Mr. Reffner:

Enclosed please find four executed copies of the Conciliation Agreement proposed by the FEC in this matter. Please return a fully executed agreement to me. On receipt of same, I will direct my client to pay the civil penalty and request uncollected rent from the tenant.

Should you have any questions about this matter, please contact me. I appreciate your consideration throughout this matter.

Very truly yours,

Hancock & Estabrook

Thomas C. Buckel, Jr.

TCB/pks
enclosures

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 24 AM 11:46

LAW OFFICES
MALONEY & BURCH
 1100 CONNECTICUT AVENUE, N.W.
 WASHINGTON, D.C. 20036-4101

(202) 293-1414
 FAX (202) 293-1702

September 10, 1990

Craig Reffner, Esq.
 Office of the General Counsel
 Federal Election Commission
 999 E St., N.W. 6th Floor
 Washington, DC 20463

RECEIVED
 FEDERAL ELECTION COMMISSION
 OFFICE OF THE GENERAL COUNSEL
 90 SEP 10 PM 3:30

Re: MUR 2677

Dear Mr. Reffner:

Enclosed are three copies of Respondent's brief in response to the Counsel's brief recommending "probable cause" in the above-referenced matter.

Please call me if you have any questions.

Sincerely,



Daniel J. Swillinger

0104033273

BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

RE: MUR 2677

RESPONSE TO GENERAL COUNSEL'S BRIEF
RECOMMENDING A FINDING OF "PROBABLE CAUSE"

Now comes Lumbermens Mutual Casualty Company, Respondent herein, and responds to the General Counsel's brief recommending that the Commission find "probable cause to believe" that a violation of the Act has occurred.

I. INTRODUCTION

This matter was generated by a complaint filed in August, 1988, by the National Republican Congressional Committee against Rosemary Pooler, a candidate for Congress, against Lumbermens Mutual Casualty Company, and Egan Real Estate Co., the rental agent. It alleged that office space in a building owned by Lumbermens and managed by Egan was rented by the Pooler campaign at below market value, that the Pooler campaign received special treatment in the rental, and, as a result, illegal corporate contributions were made by Lumbermens and Egan.

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The Commission found "reason to believe" a violation had occurred in April, 1989, in that the Pooler campaign received a below market rate rental for the space, contrary to 2 U.S.C. Sec. 441b. Lumbermens denied that the rental arrangement was at a below market rate, and further denied that Lumbermens was liable, since its agent, Egan, had made the arrangement with Pooler without Lumbermens knowledge and in direct contravention of the agency agreement.

In its probable cause brief, the Counsel has abandoned its position that the rental rate was below market, and focuses instead on two other issues -- that the full amount of the rent was not received, and that some of the rent was not received in a timely manner. (Counsel's Br., p. 2) The brief continues to hold Lumbermens "legally responsible" for these occurrences. (Counsel's Br., p. 3).

II. ARGUMENT

A. Lumbermens Is Not Liable for the Acts of Egan

The Counsel's continued assertion that Lumbermens is liable for the acts of its agent, Egan, is simply wrong as a matter of law. It has been settled law in New York for decades that a principal is not responsible for the illegal acts of its agent, Curran v. Buckpitt, 225 App.Div. 880, 233 N.Y.S. 249 (1929), as long as the principal does not consent to or affirm the illegal acts of its agent, Mobil Oil Corp. v. Burdo, 329 N.Y.S. 2d 742 (1972).

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This is also the settled law in the rest of the country, as summarized in the Restatement of Agency 2d, Secs. 34, 231.

Speaking of illegal acts, the Restatement states:

Authority to do illegal or tortious acts, whether or not criminal, is not readily inferred. Thus, the appointment of a person to act as manager does not thereby give him authority to make trade agreements so opposed to public policy that they will not be enforced, or to inaugurate illegal blacklists or boycotts, or to make fraudulent statements concerning his principal's goods.

Sec. 34, Comment g.

The evidence is uncontroverted that Lumbermens took all commercially reasonable steps to assure that the agency agreement was properly carried out, and was not even aware of this rental until the complaint in this matter was filed. The agent's failure to notify Lumbermens is in direct violation of the agency agreement (Exhibit A), which states in paragraph 7 that all leases "shall be subject to the final approval and instructions of the owner." The agent admitted that he had not informed Lumbermens about the Pooler lease. (Exhibit B, Letter from Jack McAuliffe to Nicholas Tkachuk, par. 2.)

In addition, the agent was under an affirmative duty under paragraph 1(d) of the agency agreement to "Collect rents when due." If Egan failed to collect the proper amounts in a timely manner, the agent was clearly operating in violation of, and outside the scope of, his agency agreement.

These are precisely the circumstances in which a courts have held that a principal may not be held liable for the illegal acts of its agent. To conclude otherwise would be to make a principal liable for all acts of its agent, regardless of the agent's acts, a liability not supported by law or reason.

B. All Agreed-Upon Rent Was Paid

The Counsel's brief contends that "the full amount of the rent payable during the rental period was not received." (Counsel's Br., p.2). This is incorrect.

According to Mr. McAuliffe's letter to Lumbermens (Exhibit B), the rental agreement was as follows:

1. In 1987, an oral agreement provided the rental was on a "week-to-week basis, with the understanding that [Pooler] would pay for electrical and janitorial services for the year 1987." (Ex. B, p. 1). Pooler's committees made such payments, according to the public record as set out in the Counsel's Factual and Legal Analysis attached to the reason to believe letter of April 25, 1989 (Exhibit C, p. 2), totalling over \$800.

Contrary to the Counsel's contention, there was no agreement for a \$150 per month rental for 1987, but rather only for an additional \$150 per month for the last two months of 1987, as stated in the Counsel's Factual and Legal Analysis (Exhibit C, pp. 1-2). This rental payment was made on December 28, 1987.¹

¹ If the agent had made such an arrangement with Pooler, he has deceived Lumbermens regarding it. Indeed, it appears that the Counsel is trying to expand an additional two-month, \$300 payment

2. The 1988 agreement provided for rent of \$250 per month. A payment for these three months was made on March 15, 1988.

In sum, the rental agreements provided for the payment of \$300 for 1987 and \$750 for 1988 -- these payments were made -- as were the utilities and janitorial payments totalling \$987.50. Pooler paid a grand total of \$2037.56 for the space, which the Counsel appears to agree was a fair market value for this unimproved space in an old building with a 25% vacancy rate.

The remaining issue is that of the timeliness of the rent payments. It is clear that they were late to varying degrees, but given the small amount of money at issue, this hardly seems significant. If, however, the Commission chooses to pursue this matter, it is Egan, not Lumbermens, which is responsible, since the failure to collect rents in a timely fashion is an explicit breach of the agency agreement. (Exhibit A, para. 1 (d)).

(Note con'd) into an annual month-to-month rental agreement. There is no basis in the record for this retroactive effort.

III. CONCLUSION

For the reasons stated above, Lumbermens Mutual Casualty Company requests that the Commission take no further action as to Lumbermens, and requests that the matter be dismissed.

Respectfully submitted,



Daniel J. Swillinger

Counsel for Lumbermens Mutual Casualty Co.

September 10, 1990

EXHIBIT A

THIS AGREEMENT, made this 1st day of December 1983, between LUMBERMENS MUTUAL CASUALTY COMPANY of Long Grove, Illinois, hereinafter called "Owner" and EAGAN REAL ESTATE, INC. of Syracuse, New York, hereinafter referred to as "Agent".

WITNESSETH:

WHEREAS, "Owner" is the owner of The Syracuse Building, 224 Harrison Street, Syracuse, New York, hereinafter referred to as Property, located at the corner of Harrison Street and Harrison Place in Syracuse, New York, and desires to secure the services for the management of the property; and,

WHEREAS, "Agent" is desirous of assuming the management of the said Property,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) by each of the parties to the other in hand paid, and of other good and valuable considerations, the receipt whereof is hereby acknowledged, it is mutually covenanted and agreed that:

1. The "Agent" as an independent contractor is hereby appointed manager of the property for the performance of the services hereinafter specified:
 - (a) Supervise the operation of the property.
 - (b) Negotiate rentals and leases in the property.
 - (c) Keep the property rented to suitable tenants.
 - (d) Collect rentals when due.
 - (e) Prosecute suits for rental and default, and for possession of the premises.
 - (f) Cause such incidental repairs and decorations to be made from time to time as may be necessary to maintain the property in good repair and condition.
 - (g) Purchase the supplies and materials necessary and requisite for the operation and maintenance of the property.
 - (h) Perform such other services pertaining to the management of the building as the "Owner" shall direct.
 - (i) Hire for the "Owner's" account all help employed therein and to supervise such help.
2. "Agent" shall not directly or indirectly receive or retain any profit or gain by reason of the management of the property other than is hereinafter provided.
3. "Agent" shall promptly notify "Owner" in writing of the receipt of any service of process, summons, tax bills, or other legal document of any governmental body or agency or person, and to deliver the same to "Owner" on request. Nothing herein provided, or in relationship established by this agreement, shall be construed to authorize the "Agent" to accept service of process on behalf of the "Owner".

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4. "Agent" shall keep accurate books and records of all monies received on account of rental and from all other sources pertinent to the property and for all disbursements thereof, and shall account to "Owner" from time to time as "Owner" may direct and shall deliver to "Owner" the said monies or part thereof from time to time as may be requested by "Owner", and shall keep at all times all money so received in a safe place and separate and apart from any other monies or funds.
 5. All books and records and all other paper, documents and correspondence shall be the property of the "Owner" and shall be kept in an orderly manner and in a safe place in the office of the "Agent" unless otherwise directed by the "Owner" and shall be available to the "Owner" at any time.
 6. "Agent", as requested, shall furnish a bond running to the "Owner", satisfactory in amount and form and substance to the "Owner" and issued in a company approved by the "Owner".
 7. All contracts or matters including, but not limited to leases or legal proceedings directly or indirectly pertaining to the property, its management or otherwise, shall at all times be subject to the final approval and instructions of the "Owner", it being specifically agreed that the "Owner" reserves this authority.
 8. As compensation, the "Agent" shall be paid five per cent (5%) of the gross revenue collected from the property during the term of this agreement, which five per cent (5%) shall be deducted by "Agent" from the monthly receipts collected.
 9. Except for all space which "Owner" or any affiliate or subsidiary of "Owner" may from time to time occupy in the conduct of its own business, "Agent" shall be paid a commission on all transactions affected by "Agent" at the rate of 5% of the total annual rental called for in the lease. "Agent" agrees to cooperate with other brokers in the leasing of space and "Agent" is responsible for arranging payment to other brokers within the limits of the 5% fee. "Agent" will be paid a commission upon the renewal of all transactions affected by "Agent" at the rate of 2½% of the total annual rental called for in the lease renewal.
 10. "Owner" agrees to indemnify and save "Agent" harmless, except in cases of willful misconduct or its own negligence, and that of its employees from all claims arising out of the course of its duties in connection with the leasing and management of the Building and from liability for injuries suffered by any employee or other person whomsoever while on the Building premises, and to carry at its own expense Comprehensive General Liability Insurance, with "Agent's" interests being fully insured, in amounts adequate to protect the interest of "Owner" and "Agent". "Owner" further agrees to reimburse "Agent" for court costs and other reasonable fees, including attorneys' fees, incurred by "Agent" in defending any action brought against "Agent" for injury or damage claimed to have

been suffered upon the building property. "Agent" shall not be liable for any error of judgment or for any mistake of fact or law, or for anything which it may do or refrain from doing in pursuance of its duties and activities hereunder, except in cases of willful misconduct or its own negligence and that of its employees.

11. This contract shall be effective as of December 1, 1983 and shall continue in full force and effect until November 30, 1984, and shall continue automatically thereafter for like periods unless either party shall notify the other of intention to cancel by giving sixty (60) days' written notice prior to the expiration of this agreement or any renewal thereof.
12. This agreement may be terminated at the option of the "Owner" upon thirty (30) days' notice to "Agent", in the event the present management of the "Agent" is changed.
13. Notices hereunder shall be written and shall be given by personal delivery to an officer of the other party hereto, or by depositing the notice in the United States Mail with postage prepaid and addressed to the "Owner" at Lumbermens Mutual Casualty Company, Long Grove, Illinois 60049, and to the "Agent" as Eagan Real Estate, Inc., One MONY Plaza, Syracuse, New York 13202 (if the name of the building is changed, then the name of the building as it is then known shall be used).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first above written.

Attest:

J. L. Rine
Real Estate Officer

Attest:

J. E. Rine

LUMBERMENS MUTUAL CASUALTY
COMPANY

By *[Signature]*
Senior Vice President

EAGAN REAL ESTATE, INC.

By *[Signature]*

EAGAN
Real Estate Inc.

EXHIBIT B

COMMERCIAL

RESIDENTIAL

MANAGEMENT

MORTGAGES

PHONE (315) 474-7411

September 16, 1988
"Our 69th Year"

Mr. Nicholas B. Tkachuk
Real Estate Officer
Lumbermens Mutual Casualty Co.
Kemper Insurance Building
Long Grove, IL 60049

Re: Rosemary Pooler

Dear Mr. Tkachuk:

I am writing to clarify the Rosemary Pooler occupancy of Office 202 in the Syracuse Building from January 1, 1987 to March 31, 1988.

Under oral agreement, Rosemary Pooler agreed to lease the premises known as Office 202 in the Syracuse Building on a week-to-week basis, with the understanding that she would pay for electrical and janitorial services for the year 1987. I may have mentioned to you that we had a tenant that would take Office 202 on a temporary basis, but no mention was made of the name of the tenant - Rosemary Pooler - or that she had been a candidate for Congress. Agreement was made commencing January 1, 1988 that Pooler would pay \$250 a month plus electricity for Office 202. Her occupancy was terminated as of March 31, 1988. During the total term of fifteen (15) months, Pooler paid a total of \$2,038 or \$136 per month. This amounts to \$3.25 per square foot or approximately \$1.40 above the services she was charged for.

Office 202 is a one-room office, 42' x 12', with no interior partitions. Pooler agreed to take the premises in an "as is" condition with no expenditure to the Landlord. This agreement represented a saving to the Landlord of \$10 to \$15 a square foot which would be normal tenant improvement cost, which is included in the base rate. The base rate at that time was \$12 per square foot.

In addition, if Office 202 was rented to a permanent tenant, it would have been necessary for the Landlord, at its own expense, to

Page 2 of 2
Tkachuk

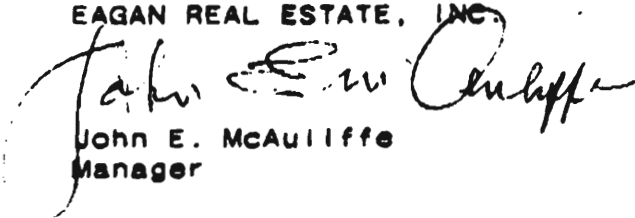
to remove partition and doorway that presently exists in the hallway outside the premises. (Office 202 is still vacant.)

At all times during Pooler's occupancy, Office 202 was carried on Eagan Real Estate's list of premises available for rental.

I want to emphasize that Lumbermens Mutual Casualty Company was not aware of or involved in negotiations concerning Pooler's tenancy and that her occupancy was the responsibility of Eagan Real Estate, Inc.

Very truly yours,

EAGAN REAL ESTATE, INC.


John E. McAuliffe
Manager

JEM/pl
Enc.

EXHIBIT B

MEMORANDUM

9/12/88

Fax #202-775-9089
Mr. Dan Swilling

RE: ROSEMARY POOLER

Under oral agreement, Rosemary Pooler agreed to lease the premises known as Office 202 in the Syracuse Building on a week-to-week basis, with the understanding that she would pay for electrical and janitorial services for the year 1987. Agreement was made commencing January 1, 1988 that Pooler would pay \$250 a month plus electricity for Office 202. Her occupancy was terminated as of March 31, 1988. During the total term of fifteen (15) months, Pooler paid a total of \$2,038 or \$136 per month. This amounts to \$3.25 per square foot or approximately \$1.40 above the services she was charged for.

Office 202 is a one-room office, 42' x 12', with no interior partitions. Pooler agreed to take the premises in an "as is" condition with no expenditure to the Landlord. This agreement represented a saving to the Landlord of \$10 to \$15 a square foot which would be normal tenant improvement cost, which is included in the base rate. The base rate at that time was \$12 per square foot.

In addition, if Office 202 was rented to a permanent tenant, it would have been necessary for the Landlord, at its own expense, to remove partition and doorway that presently exists in the hallway outside the premises. (Office 202 is still vacant.)

At all times during Pooler's occupancy, Office 202 was carried on Eagan Real Estate's list of premises available for rental.

At various times, vacant premises in the building have been leased at lower than market rental, to organizations other than for political activity, such as charitable or temporary business use. For example, from October 1987 through May of 1988, 3800 square feet on the third floor of the Syracuse Building was leased to Energy Controls at the rate of \$3.50 per square foot on a month-to-month basis. In 1988 1000 square feet was leased to M. Raftrey, who dealt in the sale of Waterford crystal for charitable purposes. At the present time, the National Multiple Sclerosis Society leases space in the building on a month-to-month basis at below the market rate.

During her occupancy, Pooler had only two (2) desks and a file cabinet in the office. It made no difference whether she was using 500 square feet or 2000 square feet.

EXHIBIT C

Ms. Pooler began using office space in the Syracuse Building in November 1986, after her unsuccessful bid that year for a seat in Congress. She entered into an oral agreement to lease the office space from the Eagan Real Estate Co. The agreement required that she only pay for utilities and janitorial services. She reached another oral agreement with Eagan in October 1987,

and agreed to pay \$150 per month for the office. In January 1988 she agreed in writing to a month-to-month lease and to pay \$250 for the office space plus the telephone and electric bills. Irregular rent payments were made by Friends of Rosemary Pooler and Friends of Rosemary Pooler '88 (the "Pooler Committees") to the Eagan Real Estate Co.^{1/}

Counsel representing Lumbermens has filed a response to the complaint, in which he denies that his client violated the Act and disputes some of the factual allegations in the complaint. Lumbermens denies that it gave the Pooler campaign any special leasing arrangement. Lumbermens alternatively contends that it should not be responsible for the actions of Eagan because Eagan acted outside the scope of its agency agreement with Lumbermens.

^{1/} According to the public record, the Pooler Committees made the following payments to Eagan Real Estate. Unless otherwise noted each payment was designated as rent on the disclosure reports:

Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee)

June 11, 1987 -	\$497.89
August 19, 1987 -	21.75
November 14, 1987 -	253.07
Total	<u>\$772.71</u>

Friends of Rosemary Pooler '88 (Pooler's 1988 principal campaign committee)

December 28, 1987 -	\$300.00
March 1, 1988 - (designated for electric charges for July 1987 through February 1988)	173.72
March 15, 1988 -	750.00
May 2, 1988 - (designated for electric charges for February and March 1988)	<u>41.13</u>
Total	\$1264.85

Total for both committees: \$2037.56



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 28, 1990

Leslie J. Kerman, Esq.
Epstein, Becker & Green, P.C.
1227 25th Street, N.W.
Washington, D.C. 20037-1156

RE: MUR 2677
Rosemary Pooler,
Friends of Rosemary Pooler and
Sharon Sherman, as treasurer, and
Friends of Rosemary Pooler '88 and
James M. Hanley, as treasurer

Dear Ms. Kerman:

This is in response to your letter dated September 25, 1990, which we received on September 25, 1990, requesting an extension until October 9, 1990 to respond to the General Counsel's Brief recommending probable cause to believe.

Normally, such a request would not be granted less than five days prior to the due date of the response. After considering the circumstances presented in your letter, I have nonetheless granted the requested extension. Accordingly, your response is due by the close of business on October 9, 1990. In the future, please be aware that requests for extensions will not be considered unless they are made in writing at least five days prior to the due date of the response and specific good cause is demonstrated.

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

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lisa E. Klein
Assistant General Counsel

06C 8306

EPSTEIN BECKER & GREEN, P.C.

ATTORNEYS AT LAW

1227 25TH STREET, N.W.

WASHINGTON, D.C. 20037-1156†

(202) 861-0900

TELECOPIER: (202) 296-2882

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(212) 351-4500**

**1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-2501
(213) 556-6661**

**SIX LANDMARK SQUARE
STAMFORD, CONNECTICUT 06901-2704†
(203) 346-3737**

**212 CARNEGIE CENTER
PRINCETON, NEW JERSEY 08540-6212
(609) 452-2445**

**27 SCHOOL STREET
BOSTON, MASSACHUSETTS 02108-4303
(617) 720-3555**

**†P.C. NEW YORK, WASHINGTON, D.C.
CONNECTICUT, VIRGINIA AND
TEXAS ONLY**

**FOUR EMBARCADERO
SAN FRANCISCO, CALIFORNIA 94111-5954
(415) 396-3500**

**12201 MERIT DRIVE
DALLAS, TEXAS 75251-2213†
(214) 490-3143**

**116 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301-1530
(904) 681-0596**

**2400 SOUTH DIXIE HIGHWAY, SUITE 100
MIAMI, FLORIDA 33133
(305) 856-1100**

**510 KING STREET, SUITE 301
ALEXANDRIA, VIRGINIA 22314-1132
(703) 684-1204**

LEGAL & CONFIDENTIAL

October 22, 1990

HAND-DELIVERED

**Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463**

**RE: M.U.R. 2677: Respondents Rosemary Pooler, Friends of
Rosemary Pooler and Sharon Sherman as Treasurer, and
Friends of Rosemary Pooler '88 and James M. Hanley as
Treasurer**

Dear Mr. Noble:

This letter constitutes the response of Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman as Treasurer, and Friends of Rosemary Pooler '88 and James M. Hanley as Treasurer, ("the Respondents"), to the General Counsel's brief in Matter Under Review Number 2677, wherein the General Counsel recommends that the Federal Election Commission find probable cause that the Respondents violated the Federal Election Campaign Act of 1971, as amended ("the Act").

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OFFICE OF GENERAL COUNSEL
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I. Statement of Facts

After an unsuccessful bid for election to the 27th Congressional District of New York in 1986, Rosemary Pooler sought office space in downtown Syracuse as a base from which to explore professional options. Her efforts yielded employment in Albany and an appointment as a visiting professor at Syracuse University Law School.

Rosemary Pooler conducted her job search from an office building at 224 Harrison Street in Syracuse, New York. She initially occupied this office space pursuant to an oral agreement with Eagan Real Estate, Inc. ("Eagan") which managed the office building. Under the terms of this first agreement, Rosemary Pooler agreed to lease Office 202 on an "as is," week-to-week basis and only to pay for electrical and janitorial services for the year 1987. These latter expenses were paid for by Friends of Rosemary Pooler (Pooler's 1986 principal campaign committee) to cover any incidental uses of the space for political purposes.¹ Significantly, there was no agreement during this time, as the General Counsel contends, that Rosemary Pooler pay \$150 a month for rent.

When Rosemary Pooler officially became a candidate again on October 27, 1987, she agreed to pay \$150.00 per month, excluding electricity, until the end of the year. This new agreement was voluntarily initiated by Rosemary Pooler and represented an apportionment of the cost of using the space attributable to political purposes. Friends of Rosemary Pooler '88 (Pooler's 1988 principal campaign committee) wrote a check made payable to Eagan for \$300 on December 28, 1987 to cover rent for November and December, 1987.

Beginning on January 1, 1988, a new agreement was again negotiated between Rosemary Pooler and Eagan whereby Eagan agreed to give 30 days notice before terminating her occupancy, in exchange for a rent of \$250.00 per month plus electricity. Rosemary Pooler terminated her occupancy on March 31, 1988. Friends of Rosemary Pooler '88 paid rent on a quarterly basis and wrote a check on March 15, 1990 made payable to Eagan for \$750 to cover rent for January-March, 1988. Friends of Rosemary Pooler '88 also wrote a check to Eagan for \$173.72 in March, 1988 to cover all outstanding utilities.

At all relevant times in 1987 and 1988, Eagan listed the premises for rental to commercial tenants and had been unable to find a permanent tenant for Office 202. Consequently, Rosemary Pooler would have had to evacuate the premises if a permanent tenant was found.

¹ Friends of Rosemary Pooler reported the following disbursements totaling \$772.71 to Eagan: 6/11/87 for \$497.89; 8/19/87 for \$21.75; 11/4/87 for \$253.07.

II. Analysis

The General Counsel alleged that Respondents accepted an in-kind corporate contribution in violation of 2 U.S.C. § 441b(a) by failing to pay the full amount of rent due and not paying rent in a timely manner. Respondents will demonstrate that these contentions are contrary to both the facts and the applicable regulations.

1. Respondents already paid the full amount due for use of the office space for campaign-related purposes.

Respondents have consistently stated that any personal use of the relevant office space was not an expenditure for purposes of the Act because such use was not made in connection with a federal election as required by 2 U.S.C. § 431(9). Accordingly, Respondents have asserted that, as an individual entertaining *inter alia* the idea of running for federal office, Rosemary Pooler was entitled to reasonably allocate the expenses of renting office space between personal and political purposes until such time as the space became a campaign headquarters. As such, Rosemary Pooler made three different allocations of the costs attributable to personal and political use of Office 202 before the campaign was moved to a permanent headquarters.

The initial oral agreement between Rosemary Pooler and Eagan covered the period prior to Rosemary Pooler's announcement of her candidacy in the 1988 election cycle and only required the payment of utilities. Rosemary Pooler made a determination to allocate the cost of utilities to Friends of Rosemary Pooler and to allocate the rent due to personal use. Of course, no rent payment was actually required and Rosemary Pooler effectively used the office space for personal use free of charge.

In two subsequent agreements with Eagan, Rosemary Pooler re-negotiated the rental agreement to reflect an increased use of the space for political purposes. In each instance, the remaining cost of using the space was attributable to personal use and Eagan did not require that such use be paid for. In the beginning of 1988, Rosemary Pooler concluded that she could no longer allocate any use of the office space to personal use. She then sought permanent office space for the campaign and the arrangement with Eagan was terminated in March, 1988.

Respondents contend that Rosemary Pooler selected a reasonable method by which to allocate personal and political use of the office space. In fact, she requested to pay rent solely to avoid the acceptance of in-kind corporate contributions by either of her principal campaign committees.

The General Counsel recognized that Rosemary Pooler's allocation formula was reasonable. However, the General Counsel failed to acknowledge that a new agreement was negotiated for November and December, 1987 and instead made the terms of the the second agreement, e.g. \$150 per month, retroactive for all of 1987. As stated, Rosemary Pooler was

Lawrence M. Noble, Esquire
October 22, 1990
Page 4

not a candidate during the period of the first agreement and, therefore, only allocated the cost of utilities to Friends of Rosemary Pooler, her 1986 principal campaign committee, in order to cover storage and winding up costs.

The General Counsel's failure to address the conditions of the first agreement lead to the erroneous conclusion that Respondents failed to pay all rent due. The General Counsel argued that Respondents owed rent totalling \$2,550 or \$1,800 (\$150 per month, excluding electricity) for 1987 and \$750 for the first three months of 1988. The General Counsel included in this amount the \$772.71 paid in 1987 for utilities by Friends of Rosemary Pooler and the \$300 and \$750 paid by Friends of Rosemary Pooler '88.

Thus, as demonstrated above, Respondents have paid the full amount due for use of the office space for campaign-related purposes and, accordingly, the General Counsel's allegations on this issue are without merit.

2. Respondents rental payments were timely.

The National Republican Congressional Committee originally contended that the terms under which Rosemary Pooler rented Office 202 at 224 Harrison Street were less than the "usual and normal charge" for such goods or services and constituted an in-kind contribution under 11 C.F.R. § 100.7(a)(1)(iii)(A). However, the term usual and normal charge is defined as "the price of those goods in the market from which they ordinarily would have been purchased." 11 C.F.R. § 100.7(B)(1).

In this case, there was no market for the office space at issue. Eagan listed this office space for rent to commercial tenants at all relevant times in 1987 and 1988. The General Counsel recognized this fact when it decided not to pursue the original allegations by the National Republican Congressional Committee that the usual and normal charge should be the rent paid by commercial tenants in the same building.

Having conceded that Rosemary Pooler was not renting Office 202 as a commercial tenant, the General Counsel cannot now argue that the rent must be payable on the same terms as commercial tenants. Clearly, Rosemary Pooler and Eagan agreed that rental payments would be timely if made on a quarterly basis, which was reasonable given the terms of Ms. Pooler's occupancy of the space (particularly, since the office space was still listed for rent, and her tenancy could be terminated at any time -- a provision which one certainly does not find in standard commercial leases!!). Therefore, the quarterly payments by Friend of Rosemary Pooler '88 in December, 1987 and March, 1988 were timely and General Counsel's allegations on this matter should also be dismissed.

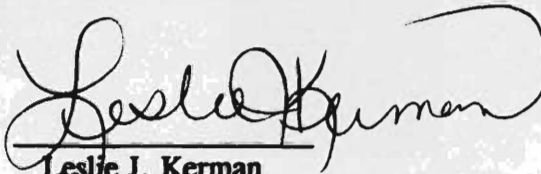
Lawrence M. Noble, Esquire
October 22, 1990
Page 5

III. Finding of No Probable Cause

In light of the foregoing the Respondents request that the Federal Election Commission find that no probable cause exists that they violated the Act.

Respectfully Submitted,

By:



Leslie J. Kerman
Epstein, Becker & Green, P.C.
1227 25th Street, N.W.
Suite 700
Washington, D.C. 20037
(202) 861-1877

Attorney for Respondents

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Rosemary Pooler)
Friends of Rosemary Pooler and)
Sharon Sherman, as treasurer)
Friends of Rosemary Pooler '88 and)
James M. Hanley, as treasurer)
Lumbermens Mutual Casualty Company)
Eagan Real Estate Company)

MUR 2677

**SENSITIVE
EXECUTIVE SESSION**

FEB 12 1991

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 18, 1989, the Commission found reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer (collectively referred to as the '86 Committee"), Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer (collectively referred to as the "'88 Committee"), Lumbermens Mutual Casualty Company ("Lumbermens") and Eagan Real Estate Company ("Eagan") each violated 2 U.S.C. § 441b(a) in connection with Ms. Pooler's lease of office space. On August 8, 1990, the General Counsel sent Briefs to each Respondent stating that this Office was prepared to recommend a finding of probable cause to believe that a violation had occurred. Responses have been received and as discussed below, this Office recommends that the Commission find probable cause to believe that each of the Respondents violated Section 441b(a). Attachment A (Response of Rosemary Pooler and her 1986 and 1988 Committees) Attachment B (Response of Lumbermens) and Attachment C (Response of Eagan).

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II. ANALYSIS

As set forth more fully in the General Counsel's Briefs, incorporated herein by reference, a review of the available evidence showed that Rosemary Pooler and her Committees (the "Tenants") rented office space, in a building owned by Lumbermens and managed by Eagan, over a fifteen month period, under two separate leases. In calculating the rent charged under these leases, it appeared that a total of \$727.29 in rent remained uncollected and that the rent actually paid was not collected in a timely manner.

Respondents have continuously disputed the General Counsel's calculation of the rent assessed and have now, for the first time, clarified the terms of the leases governing the office space in question. In particular, the Tenants and Lumbermens now state that the occupancy of the office space actually occurred over three different leases rather than two. Attachment A at 2; Attachment B at 5-6. Eagan, on a different note, does not dispute that the rent remains uncollected, but argues that the uncollected amount totals \$512 and not \$727.29. Attachment C at 2.¹

The Tenants assert that the occupancy period between January 1, and October 27, 1987, was covered by a separate oral lease which provided only for the payment of janitorial services and electricity. Attachment A at 2. According to the Tenants, Rosemary Pooler announced her candidacy for the 1988 election on

October 27, 1987, and on that date a new lease, which provided a rental payment of \$150 per month, excluding electricity, became effective. Id. When this second lease expired on December 31, 1987, the Tenants assert that a third lease, which covered the period between January 1, 1988, and March 31, 1988, and provided for rent of \$250 per month, excluding electricity, was negotiated. Id.

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In its latest response, Lumbermens asserts for the first time that the rent for the months of January through October 1987 consisted of utility and electrical costs only, and acknowledges that all other rental charges from November 1987 through March 1988 were collected. Attachment B at 5-6. Previously, Lumbermens had represented that Ms. Pooler and her Committees occupied the office space in question for 15 months and that she paid a total of \$2,038, which, in Lumbermens' view, amounted to \$136 per month. See Lumbermens' Responses dated September 23, 1988 and May 26, 1989. This earlier position was consistent with the information provided by Eagan, who stated that during 1987 Ms. Pooler was charged \$3.25 per square foot while in 1988 she was charged \$5.13 per square foot. See Eagan's Responses dated June 14, 1989 and November 9, 1989. Since Eagan described the office space in question as having "dimensions of approximately 42' x 12'," the square footage charge amounted to \$163.80 per month for 1987 and \$258.55 per month for 1988. See Eagan's Response dated September

20, 1988.² In justifying these rental rates, Eagan submitted evidence showing that other tenants were assessed similar charges. See Eagan's response dated June 14, 1989. Neither Eagan nor Lumbermens, however, acknowledged that Ms. Pooler's rental agreement initially consisted of only janitorial and electrical costs, nor did the documentation they submitted demonstrate that other tenants were afforded such rental arrangements.

Based upon the earlier evidence which indicated that the Tenants were charged a usual and normal rent, the Commission's investigation was narrowed to determine whether the total amount of rent assessed was collected and if so, whether it was collected in a timely manner. See General Counsel's Report dated March 28, 1990. However, in light of the most recent information provided by the Tenants and Lumbermens, the issue of whether a usual and normal rent was charged would now appear to be less firmly resolved. Similarly, the information now available casts some question as to whether Rosemary Pooler may have violated Section 439a by using the office space for her personal use.³ Contrary to

2. Eagan has also stated, in response to the complaint, that beginning on January 1, 1987, Rosemary Pooler agreed to rent the office space for \$250.00 per month, excluding electricity. See Eagan's Response dated September 20, 1988.

3. The Commission, on April 10, 1990, rejected this Office's recommendation to find reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a, thereby foreclosing any further investigation into this particular issue.

Ms. Pooler's assertion that she used the office for both political and personal purposes, prorating the rent accordingly, it is now clear that all costs for the office space were borne by her two Committees.⁴

In any event, while it appears somewhat less certain whether the rent charged for the office space in this matter was of fair market value, it is nonetheless clear that the rent paid was not collected in a timely manner in violation of 2 U.S.C. § 441b(a). The Tenants acknowledge not paying rent on regular monthly intervals and assert that they had an arrangement to pay rent on a quarterly basis which, in consideration of the terms of their leases, was timely. Attachment A at 4. The Tenants do not substantiate their assertion nor is it corroborated by either Eagan or Lumbermens. On the contrary, Lumbermens, in its current response, acknowledges that the rental payments "were late to varying degrees," while Eagan has stated that its policy is to have tenants pay rent on a monthly basis and to require full

4. The Tenants explain that Rosemary Pooler negotiated the first lease in her capacity as a private citizen and as such, she was entitled to lease office space for free or for the janitorial and electrical costs only. Attachment A at 2-4. However, in as much as the office was being used for political as well personal purposes, the Tenants maintain that the 1986 Committee paid for the electrical and janitorial costs until October 27, 1987, to prevent the appearance that a contribution was being made. Id. at 2. A review of disclosure reports shows that the 1986 Committee made a number of expenditures to cover the janitorial and electrical costs it had agreed to pay while the 1988 Committee made rental expenditures from November 1987 through March 1988. See General Counsel's Report dated March 28, 1990 at 3, n. 2.

payment by the tenth of the month. Attachment B at 6; Eagan's Response dated November 9, 1989.

In conclusion, given the apparent amount involved, this Office recommends that the Commission decline reopening an investigation concerning the rent charge assessed against the Tenants. Regardless of whether the rent assessed against the Tenants constituted a fair market value rate, the evidence nonetheless shows that the rent was not paid or collected in a timely manner. Accordingly, this Office recommends that the Commission find probable cause to believe that Rosemary Pooler violated 2 U.S.C. § 441b(a); Friends of Rosemary Pooler and Sharon Sherman, as treasurer violated 2 U.S.C. § 441b(a); Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer violated 2 U.S.C. § 441b(a); Lumbermens Mutual Casualty Company violated 2 U.S.C. § 441b(a); and Eagan Real Estate Company violated 2 U.S.C. § 441b(a).⁵

In light of the fact that the only remaining issue in this matter consists of the untimely payment of rent for three months, this Office recommends that the Commission, in the proper ordering of its priorities and resources, see Heckler v. Chaney, 470 U.S.

5. Lumbermens also continues to assert that it should not be held responsible, because Eagan, the agent who negotiated the lease and collected the rent, acted outside its scope of authority. Attachment B at 3-5. As stated in the General Counsel's brief to Lumbermens, the terms of the agency agreement between Eagan and Lumbermens specifically call for Eagan to collect rent. Moreover, it appears that Eagan was delegated the authority to establish a rent collection policy. See Eagan's response dated November 9, 1989. In this regard, Eagan's actions do not appear to fall outside the scope of the agency agreement.

821 (1985), take no further action with respect to any of the Respondents.

V. RECOMMENDATIONS

1. Decline to reopen an investigation in this matter concerning the rental charge assessed against Rosemary Pooler; Friends of Rosemary Pooler and Sharon Sherman, as treasurer; and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer.

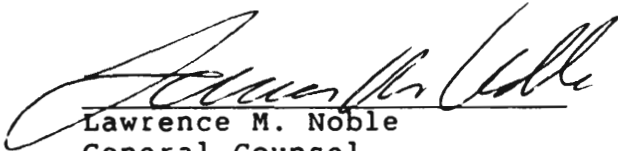
2. Find probable cause to believe that Rosemary Pooler violated 2 U.S.C. § 441b(a); Friends of Rosemary Pooler and Sharon Sherman, as treasurer violated 2 U.S.C. § 441b(a); Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer violated 2 U.S.C. § 441b(a); Lumbers Mutual Casualty Company violated 2 U.S.C. § 441b(a); and Eagan Real Estate Company violated 2 U.S.C. § 441b(a), but take no further action against any of the Respondents.

3. Close the file.

4. Approve the appropriate letters.

Date

1/30/91


Lawrence M. Noble
General Counsel

Attachments

- A. Response of Rosemary Pooler and her 1986 and 1988 Committees
- B. Response of Lumbers
- C. Response of Eagan

Staff Assigned: Craig Douglas Reffner

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**Rosemary Pooler;
Friends of Rosemary Pooler and Sharon
Sherman, as treasurer;
Friends of Rosemary Pooler '88 and
James M. Hanley, as treasurer;
Lumbermens Mutual Casualty Company;
Eagan Real Estate Company.**

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 12, 1991, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 2677:

1. Decline to reopen an investigation in this matter concerning the rental charge assessed against Rosemary Pooler; Friends of Rosemary Pooler and Sharon Sherman, as treasurer; and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer.
2. Take no action with respect to recommendation 2 contained in the FEC General Counsel's report signed January 30, 1991.
3. Close the file.

(continued)

Federal Election Commission
Certification for MUR 2677
February 12, 1991

Page 2

4. Direct the Office of General Counsel to send appropriate letters pursuant to the above actions.

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

Attest:

2-13-91
Date

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

21040332303



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 21, 1991

CLOSED

Daniel J. Swillinger, Esq.
Maloney & Burch
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036-4101

RE: MUR 2677
Lumbermens Mutual Casualty Company

Dear Mr. Swillinger:

On August 8, 1990, you were notified that the General Counsel was prepared to recommend that the Federal Election Commission find probable cause to believe that your client violated 2 U.S.C. § 441b(a). On September 10, 1990, you submitted a response to the General Counsel's Brief.

After considering the circumstances of the matter, the Commission determined on February 12, 1991, to take no further action against your client, and closed the file. The file will be made 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 of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission reminds you that a corporation's lease of office space to a federal candidate at less than the usual and normal value appears to be a violation of Section 441b(a). Your client should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

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



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 21, 1991

Leslie J. Kerman, Esq.
Epstein, Becker & Green, P.C.
1227 25th Street, N.W.
Washington, D.C. 20037-1156

RE: MUR 2677
Rosemary Pooler,
Friends of Rosemary Pooler and
Sharon Sherman, as treasurer, and
Friends of Rosemary Pooler '88 and
James M. Hanley, as treasurer

Dear Ms. Kerman:

On August 8, 1990, you were notified that the General Counsel was prepared to recommend that the Federal Election Commission find probable cause to believe that your clients each violated 2 U.S.C. § 441b(a). On October 22, 1990, you submitted a response to the General Counsel's Brief.

After considering the circumstances of the matter, the Commission determined on February 12, 1991, to take no further action against your clients, and closed the file. The file will be made 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 of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission reminds you that a federal candidate's lease of office space from a corporation at less than the usual and normal value appears to be a violation of Section 441b(a). Your clients should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner

Associate General Counsel

Lois G. Lerner
By: [Signature]



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 21, 1991

Thomas C. Buckel, Jr., Esq.
Hancock & Estabrook
Mony Tower I
P. O. Box 4976
Syracuse, New York 13221-4976

RE: MUR 2677
Eagan Real Estate Company

Dear Mr. Buckel:

On August 8, 1990, you were notified that the General Counsel was prepared to recommend that the Federal Election Commission find probable cause to believe that your client violated 2 U.S.C. § 441b(a). On September 10, 1990, you submitted a response to the General Counsel's Brief.

After considering the circumstances of the matter, the Commission determined on February 12, 1991, to take no further action against your client, and closed the file. The file will be made 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 of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The Commission reminds you that a corporation's lease of office space to a federal candidate at less than the usual and normal value appears to be a violation of Section 441b(a). Your client should take immediate steps to insure that this activity does not occur in the future.

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

Sincerely,

Lawrence M. Noble
General Counsel

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



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

March 6, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Marc Nuttle, Executive Director
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2677
Rosemary Pooler,
Friends of Rosemary Pooler and
Sharon Sherman, as treasurer, and
Friends of Rosemary Pooler '88 and
James M. Hanley, as treasurer
Lumbermens Mutual Casualty Company
Eagan Real Estate Company

Dear Mr. Nuttle:

This is in reference to the complaint the National Republican Congressional Committee filed with the Federal Election Commission on August 24, 1988, concerning the lease of office space to Rosemary Pooler and her campaign committees.

On April 18, 1989, the Federal Election Commission (the "Commission") found that there was reason to believe that Rosemary Pooler, Friends of Rosemary Pooler and Sharon Sherman, as treasurer, and Friends of Rosemary Pooler '88 and James M. Hanley, as treasurer, Lumbermens Mutual Casualty Company and Eagan Real Estate Company each violated 2 U.S.C. § 441b(a) a provision of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter.

Subsequently, on April 10, 1990, the Commission determined to find no reason to believe that Rosemary Pooler violated 2 U.S.C. § 439a. Enclosed, please find a Statement of Reasons adopted by the Commission explaining its decision to reject the General Counsel's recommendation on this issue. This document will be placed on the public record as part of the file of MUR 2677.

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Marc Nuttle, Executive Director
National Republican Congressional Committee
Page 2

After an investigation was conducted and the General Counsel's and the Respondents' briefs were considered, on February 12, 1991, the Commission determined to take no further action against all of the Respondents, and closed the file in this matter. A Statement of Reasons explaining the Commission's decision to reject the General Counsel's recommendation to find probable cause to believe that each of the Respondents violated 2 U.S.C. § 441b(a) will be forwarded to you after it has been adopted by the Commission.

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 Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

Enclosures
Statement of Reasons

21040332303

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Rosemary Pooler

Friends of Rosemary Pooler
and James M. Hanley, as Treasurer

Friends of Rosemary Pooler '88
and James M. Hanley, as Treasurer

Eagan Real Estate Co.

Lumbermens Mutual Casualty Co.

MUR 2677

STATEMENT OF REASONS

On April 10, 1990, the Commission rejected a recommendation of the General Counsel to find reason to believe that Rosemary Pooler violated 2 U.S.C. §439a. The complaint filed in this matter alleged that Ms. Pooler had violated §439a by using certain office space leased by her two authorized campaign committees, for personal business unrelated to her campaign.

In voting to reject the General Counsel's recommendation to find reason to believe against Ms. Pooler for violating 2 U.S.C. §439a, the Commission considered the responses submitted by the respondents, and noted that the potential amount of the §439a violation, if any, would be minimal. The Commission also

noted that additional discovery would be necessary in order to determine the extent of any possible violation of §439a by Ms. Pooler, which would prolong the investigation of this matter and further obligate the Commission's limited resources.

For these reasons, consistent with its handling of similar matters, and in the proper ordering of priorities and resources, see Heckler v. Chaney, 470 U.S. 821 (1985), the Commission determined not to find reason to believe Ms. Pooler violated §439a.

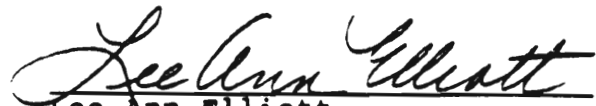
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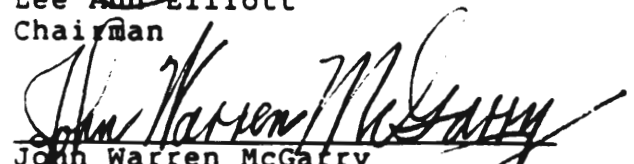
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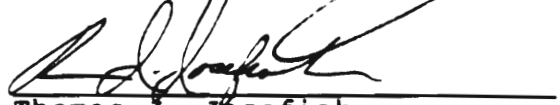
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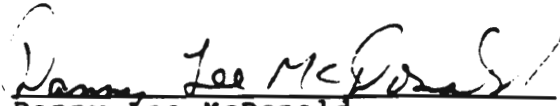
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Date

5/23/90
Date


Lee Ann Elliott
Chairman


John Warren McGarry
Vice Chairman


Thomas J. Josefiak
Commissioner


Danny Lee McDonald
Commissioner


Scott E. Thomas
Commissioner



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2677

DATE FILMED 3/29/91 CAMERA NO. 4

CAMERAMAN AS

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