FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2703

DATE FILMED 9/13/90 CAMERA NO. 2

CAMERAMAN AS

OGC 493

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

88 SEP 26 PM 2:43

State Executive Committee
REPUBLICAN PARTY OF TEXAS

Fred Meyer
State Chairman

MUR 2703

September 23, 1988

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

To the Commission:

This letter and the attached affidavit (with its attached Exhibits A and B) are submitted as a formal complaint concerning an advertising campaign by the Texas State Democratic Party, attacking the candidacy of the Republican candidate for President of the United States, George Bush. This advertising campaign constitutes a flagrant violation of the Federal election laws.

The illegally-funded television advertisements (a transcript of which are attached to the enclosed affidavit) were broadcast at various times beginning September 21 or 22 as noted on the following Texas television stations:

7 times from Sept. 22 through 24 on	KDFW-TV	Dallas, Texas
15 times from Sept. 21 through 25 on	WFAA-TV	Dallas, Texas
3 times from Sept. 22 through 24 on	KXAS-TV	Fort Worth, Texas
13 times from Sept. 21 through 24 on	KHOU-TV	Houston, Texas
4 times from Sept. 22 through 23 on	KMOL-TV	San Antonio, Texas
10 times from Sept. 22 through 24 on	KSAT-TV	San Antonio, Texas

The undersigned is credibly informed that the following sums were incurred for this television advertising campaign by the Texas Democratic Party, as follows:

KDFW-TV	$13,200
WFAA-TV	34,400
KXAS-TV	11,650
KHOU-TV	16,650
KMOL-TV	1,900
KSAT-TV	4,623
TOTAL	$82,623

The same or similar advertisements may have been broadcast by other Texas television stations or other mass media.

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211 East 7th Street, Suite 620 • Austin, Texas 78701 • (512) 477-9821

All three specific advertisements bear the statement that they were paid for with funds of the Texas Democratic Party. Such expenditures by the Texas Democratic Party, and/or its federal account, are in-kind contributions prohibited by the express terms of the agreement, personally signed "under penalty of perjury" by Governor Dukakis and Senator Bentsen in order to qualify for federal funding of their campaign. 11 CFR Sec. 9003.2 (a) (2). These expenditures for paid television advertisements do not qualify as state party expenditures exempt from the definition of "contribution" under 11 CFR Section 100.7 (b) (17) (i), which provides, in part:

> (17) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a contribution to such candidate(s) provided that the following conditions are met:
>
> (i) <u>Such payment is not for the costs incurred in</u> connection with any <u>broadcasting</u>, newspaper, magazine, billboard, direct mail or similar type of general public communication or <u>political advertising</u>....(emphasis added).

It is obvious that the advertising campaign complained of is broadcasting advertising of the type specifically governed by the foregoing section.

On the basis of the foregoing, the undersigned, on behalf of the Republican Party of Texas, requests that the Federal Election Commission:

(1) Conduct a prompt and immediate investigation of the acts of the Texas State Democratic Party in making these illegal expenditures, and of the Dukakis/Bentsen ticket in accepting these illegal in-kind contributions;

(2) Enter into prompt conciliation proceedings with the Texas State Democratic Party and the Dukakis/Bentsen ticket to remedy the violations complained of; and

FEC Commission
Page Three
September 23, 1988

(3) Impose any and all appropriate penalties grounded in violations herein alleged.

Respectfully submitted,

Fred Meyer, Chairman
Republican Party of Texas

State of Texas
ss.
County of Dallas

On this 23rd day of September, 1988, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Fred Meyer, to me personally known, who being duly sworn by me, did state that he executed the foregoing as his voluntary act and deed.

Janet L. Williams Notary Public in and for said County and State.

My commission expires 12-20-89

AFFIDAVIT

State of Texas
ss
County of Dallas

I, Fred Meyer, being first duly sworn depose and state as follows:

1. I am Fred Meyer, Chairman of the Republican Party of Texas, and have served as such since June 10, 1988.

2. I am a resident of Dallas, Dallas County, Texas.

3. That on or about September 22, 1988 I became aware of the fact that the Texas State Democratic Party ran paid political advertisements on behalf of the Democratic candidates for the offices of President and Vice President of the United States on certain television stations in Texas, a transcript of which is attached hereto marked Exhibit B; that such advertisements have been paid or are to be paid for by the Texas State Democratic Party.

4. The undersigned is credibly informed that these advertisements were broadcast at various times beginning September 21 or 22 as noted on the following Texas television stations:

7 times from Sept. 22 through 24 on	KDFW-TV	Dallas, Texas
15 times from Sept. 21 through 25 on	WFAA-TV	Dallas, Texas
3 times from Sept. 22 through 24 on	KXAS-TV	Fort Worth, Texas
13 times from Sept. 21 through 24 on	KHOU-TV	Houston, Texas
4 times from Sept. 22 through 23 on	KMOL-TV	San Antonio, Texas
10 times from Sept. 22 through 24 on	KSAT-TV	San Antonio, Texas

5. The undersigned is credibly informed that the following sums were incurred for this television advertising campaign by the Texas Democratic Party, as follows:

KDFW-TV	$13,200
WFAA-TV	34,400
KXAS-TV	11,650
KHOU-TV	16,650
KMOL-TV	1,900
KSAT-TV	4,823
TOTAL	$82,623

6. That other television stations or other mass media in the state of Texas may have also broadcast the same or similar advertisements, unknown to the affiant at this time.

7. That the advertisements referred to above each contained the following statement: "Paid for by the Texas State Democratic Party."

8. That enclosed herewith marked Exhibit A and by this reference made a part of this affidavit is a video tape recording of one of the advertising spots which was broadcast on station KDFW-TV, Dallas, Texas.

9. That attached hereto marked Exhibit B is a transcript of the sound track of that political advertisement.

10. The undersigned believes the foregoing advertisements are in violation of 11 CFR Sec. [illegible].2 (a) (2) and 9003.3, and are <u>not</u> allowable exempt expenditures under 11 CFR Sec. 100.7 (b) (17) (i).

Fred Meyer

Sworn to and subscribed before me by the said Fred Meyer this 23rd day of September, 1988

Janet L. Williams

Notary Public in and for said County and State

EXHIBIT B

[Spot opens with telephone ringing at Vice President's desk]

For eight years, Texas called George Bush for help, but when the oil business collapsed for the lack of a national energy policy, where was George?

When a quarter of a million Texas jobs were lost, where was George?

When 192 Texas banks closed and 23,000 Texas businesses failed, where was George?

Now George Bush is calling on Texans to help. But where was George when we needed him?

[almost illegible disclaimer states:
Political Ad Paid by the Texas Democratic Party]

flm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1988

Fred Meyer, Chairman
Republican Party Of Texas
211 E. 7th Street
Suite 620
Austin, TX 78701

RE: MUR 2703

Dear Mr. Meyer:

This letter acknowledges receipt on September 26, 1988, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, and the Texas Democratic Party and Bob Slagle, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 2703. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1988

Bob Slagle, Treasurer
Texas Democratic Party
815 Brazos
Suite 200
Austin, TX 78701

RE: MUR 2703
Texas Democratic Party
and Bob Slagle, as
treasurer

Dear Mr. Slagle:

The Federal Election Commission received a complaint which alleges that the Texas Democratic Party 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 2703. 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 the Texas Democratic Party 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 Frania Monarski, the staff member assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1988

Carol C. Darr, Esquire
Dukakis/Bentsen Committee, Inc.
105 Chauncy Street
Boston, MA 02111

RE: MUR 2700
Dukakis/Bentsen Committee, Inc.

Dear Ms. Darr:

The Federal Election Commission received a complaint which alleges that your clients, the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, 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 2700. 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 Dukakis/Bentsen Committee, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public.

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

9 0 0 4 0 3 0 3 4 2 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1988

Daniel A. Taylor, Esquire
Hill & Barlow
One International Place
Boston, MA 02110

RE: MUR 2703
Dukakis/Bentsen Committee, Inc.

Dear Mr. Taylor:

The Federal Election Commission received a complaint which alleges that your clients, the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, 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 2703. 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 Dukakis/Bentsen Committee, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(12)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public.

90040303430

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

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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

OGC 598

RECEIV[redacted]
FEDERAL ELECTION COMMISSION

88 OCT -5 PM 2:05

[redacted] State Executive Committee

REPUBLICAN PARTY OF TEXAS

Fred Meyer
State Chairman

MUR 2703

October 3, 1988

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

To the Commission:

On September 26, 1988, I filed with the Federal Election Commission a verified complaint as chairman of the Republican Party of Texas concerning illegally funded television advertisements paid for by the Texas Democratic Party. These ads were broadcast on at least six Texas television stations attacking the candidacy of George Bush, Republican Candidate for President of the United States.

I have now been provided with a copy of a letter written to Lee Atwater, the Bush-Quayle 88 campaign manager, by Tom Cosgrove, the Texas state director of Dukakis/Bentsen '88, a copy of which is attached and marked Exhibit C. You will note that the second paragraph of that letter begins:

> "We will stop airing the ad when Vice President Bush answers the telephone. . . ." (emphasis added)

This letter makes it clear that in fact, and without any doubt, it is the Dukakis/Bentsen campaign that has the supervision of and control over this advertising campaign, since it offers to withdraw the ad under certain conditions.

The ads were paid for by the Texas Democratic Party (as therein stated) and this constitutes an illegal contribution in kind by the state Democratic Party, knowingly and deliberately accepted by the Dukakis/Bentsen campaign despite the express terms of the agreement to accept no such contributions, personally signed "under penalty of perjury" by Governor Dukakis and Senator Bentsen in order to qualify their campaign for federal funding. 11 CFR Sec. 9003.2 (a) (2).

Further, the blatant disregard for the law by the Dukakis/ Bentsen campaign is made all the more apparent by the evident decision to continue the illegal advertising campaign, unless certain conditions were met by the Bush/Quayle campaign (see Exhibit C). And this was true even after the Federal Dukakis/

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Federal election Commission
Page Two
October 3, 1988

Bentsen campaign received notice through the public press of a request to the television stations involved to cease the advertising, which request was made by Lee Atwater, the campaign manager of the Bush/Quayle campaign. Exhibit D is a copy of a news story that appeared Saturday, September 24, 1988, in the Dallas <u>Morning News</u>. It was apparently this or other news stories which prompted the letter from the Texas Dukakis/Bentsen campaign to Lee Atwater.

I hereby submit this additional evidence to supplement my verified complaint.

Very truly yours,

Fred Meyer, Chairman
Republican Party of Texas

enclosure

STATE OF TEXAS
ss
DALLAS COUNTY

On this 3RD day of October, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Fred Meyer, to me personally known, who being duly sworn by me, did state that he executed the foregoing as his voluntary act and deed.

Janet L. Williams
Notary Public in and for
said County and State

My Commission expires December 20, 1989.

EXHIBIT C

Dukakis/Bentsen '88

P.O. Box 309 / Austin, TX 78767 / (512) 477-2595

September 28, 1988

Lee Atwater:

I propose a counteroffer to your demand that Texas television stations stop airing the Democratic ad which lists some of the ways George Bush has failed Texas over the past eight years.

We will stop airing the ad when Vice President Bush answers the telephone and explains how his response to the energy crisis over the next four years would differ from his failure to respond over the past eight years.

As the ad notes, this is a crisis that has caused Texas to lose a quarter-million jobs, yet Mr. Bush has declined to discuss it. He has declined to discuss where the Reagan Administration went wrong and what he would do differently.

Things haven't worked out like a lot of Texas oilmen thought they would 7 1/2 years ago, when one of their own became Vice President of the United States.

Oil prices are down by more than half since 1981 -- and they are threatening to decline even more. Eighty percent of the oil rigs in Texas have been shut down and stacked. Texas crude oil production is down 200,000 barrels a day. In the last two years alone foreign oil imports have jumped by more than 20%.

On energy, George Bush is telling Texans the same thing he told the people of Connecticut and Maine and elsewhere earlier this year: "I'm one of you." Yet in New Hampshire he attacked Bob Dole for supporting an oil import fee. In California, he opposed offshore drilling for oil and gas.

Your legalistic argument, that the Democratic ad "appears to violate federal election laws," is utterly without merit and begs the question raised by the ad:

> Where was George Bush when a quarter-million Texas jobs were lost, when 192 Texas banks were closed and when 23,000 Texas businesses failed?

Perhaps more important, where will George Bush be on the energy issue if he's elected president?

Tom Cosgrove

EXHIBIT D

George Bush

Saturday, September 24, 1988 The Dallas Morning News 7A

Bush camp asks stations to pull ads

By Anne Marie Kilday
Austin Bureau of The Dallas Morning News

AUSTIN — The national chairman of George Bush's presidential campaign wants Texas TV stations to hang up on an advertisement sponsored by the Democratic Party.

The 30-second spot features a ringing telephone that goes unanswered in the office of the vice president and blasts Bush for abandoning Texas during its economic crisis.

An announcer's voice repeatedly asks the question: "Where was George?" as he recites a litany of state economic woes caused by the downturn in oil prices.

Bush campaign chairman Lee Atwater Friday sent "urgent" telegrams to Texas television stations, urging them not to air the spot and saying that the commercial "appears to violate federal election laws."

Atwater said the commercial may be illegal because political parties are not permitted to engage in advertising that advocates the defeat of a specific candidate. Instead, commercials sponsored by parties are supposed to be general in nature.

Atwater also said the ad may violate a Federal Communications Commission rule requiring "comparable time" for Bush spokesmen.

State Democratic Party director Ed Martin defended the ad and said its legality had been cleared by attorneys before the spots were produced.

"What wimps," Martin said. "They can't take one clean, legal shot after they've thrown a series of low blows."

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1988

Mr. Fred Meyer, Chairman
Republican Party of Texas
211 E. 7th Street
Suite 620
Austin, TX 78701

RE: MUR 2703

Dear Mr. Meyer:

This letter acknowledges receipt on October 5, 1988, of the supplement to the complaint you filed on September 26, 1988, against the Texas Democratic Party and the Dukakis/Bentsen Committee, Inc. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
mc

BY: Lois G. Lerner
Associate General Counsel

90040303435

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1988

Bob Slagle, Treasurer
Texas Democratic Party
815 Brazos - Suite 200
Austin, TX 78701

RE: MUR 2703
Texas Democratic
Party and Bob
Slagle, as treasurer

Dear Mr. Slagle:

On October 3, 1988, you were notified that the Federal Election Commission received a complaint from Fred Meyer, Chairman of the Republican Party of Texas alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 5, 1988, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Frania Monarski, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner mac

BY: Lois G. Lerner
Associate General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1988

Carol C. Darr, Esquire
Dukakis/Bentson Committee, Inc.
105 Chauncy Street
Boston, MA 02111

RE: MUR 2703
Dukakis/Bentsen
Committee, Inc.

Dear Ms. Darr:

On October 3, 1988, you were notified that the Federal Election Commission received a complaint from Fred Meyer, Chairman of the Republican Party of Texas alleging violations of certain sections of Chapters 95 and 96 of Title 26, U.S. Code. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 5, 1988, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Frania Monarski, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1988

Daniel A. Taylor, Esquire
Hill & Barlow
One International Place
Boston, MA 02110

RE: MUR 2703
Dukakis/Bentsen
Committee, Inc.

Dear Mr. Taylor:

On October 3, 1988, you were notified that the Federal Election Commission received a complaint from Fred Meyer, Chairman of the Republican Party of Texas alleging violations of certain sections of Chapters 95 and 96 of Title 26, U.S. Code. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 5, 1988, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Frania Monarski, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner mc

BY: Lois G. Lerner
Associate General Counsel

Enclosure

90040300439

OGC# 728

October 21, 1988

88 OCT 24 PM 3:24

RECEIVED
FEDERAL ELECTION COMMISSION

Lawrence M. Noble
General Counsel
Federal Elections Commission
Washington, D.C. 20463

Re: MUR 2703

Dear Mr. Noble:

By this letter, the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, through their undersigned counsel, hereby request an additional 15 days to respond to the complaint filed against them by the Republican Party of Texas.

The Complainant alleges that the Texas State Democratic Party placed television advertisements funded in violation of the Federal Election Campaign Act. We received just yesterday supplemental information filed with the Commission by the Complainant. Before the Dukakis/Bentsen Committee, Inc. responds to the allegations of the Complainant, it would like an additional 15 days to investigate this new information.

Sincerely yours,

Scott Harris

Scott Blake Harris
839-17th Street, N.W.
Washington, D.C. 20006

Jonathan B. Sallet /SBH

Jonathan B. Sallet
2255 M Street, N.W.
Washington, D.C. 20037

OGC# 740

SIMON, ANISMAN, DOBY, WILSON & S[illegible]

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM

88 OCT 2[illegible]

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS
P. O. BOX 17047
300 PROFESSIONAL BUILDING
303 WEST TENTH
FORT WORTH, TEXAS 76102-7071

HAROLD D. HAMMETT, P.C.
OF COUNSEL TO THE FIRM

CHA[illegible] (1907-1975)
HENRY W. SIMON (1910-1980)

(817) 335-6133
METRO 429-3245

TELEFAX NO.
METRO (817) 429-5390

October 18, 1988

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

CERTIFIED NO. P512837940
RETURN RECEIPT REQUESTED

Re: MUR 2703; Texas Democratic Party and Bob Slagle, as Treasurer

Dear Mr. Noble:

This is in response to your letter of October 3, 1988, and the complaint made against my clients by Fred Meyer, chairman of the Republican Party of Texas.

The Texas Democratic Party properly purchased the television air time and paid associated television production costs as permissible expenditures under 2 U.S.C. 441a(d). The Democratic National Committee properly gave prior written authorization to the Texas Democratic Party to make such expenditures, pursuant to 11 C.F.R. 110.7(a)(4). A true copy of the September 20, 1988 letter agreement making such designation is attached hereto as Exhibit 1; a true copy of the September 23, 1988 letter making one modification to that agreement is attached as Exhibit 2. These expenditures will be reported and disclosed as required in the Texas Democratic Party's October 15, 1988 report to the Federal Election Commission.

The Texas Democratic Party made a public disclosure of this advertising as permitted by Sect. 441a(d) before the broadcasts started. The Texas Democratic Party held a public press conference in Austin on September 21, 1988, and distributed a press release (a true copy of which is attached hereto as Exhibit 3) describing the program before the first broadcast of the advertisement.

Mr. Meyer's silly complaint does not set forth a possible violation of the Federal Election Campaign Act, and the file should be closed on this matter.

Very truly yours,

Harold D. Hammett

Harold D. Hammett
Attorney for The Texas Democratic Party and Bob Slagle

HDH:cjr

cc: Bob Slagle, Treasurer

RECEIVED FEDERAL ELECTION COMMISSION OFFICE [illegible] 88 OCT 24

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VERIFICATION

STATE OF TEXAS)
)
COUNTY OF TARRANT)

BEFORE ME, the undersigned authority, on this day personally appeared HAROLD D. HAMMETT, who, first being by me duly sworn, upon his oath stated that the statements contained in the foregoing and attached reply are true and correct.

Harold D. Hammett

HAROLD D. HAMMETT

18th SUBSCRIBED AND SWORN TO by HAROLD D. HAMMETT on this the 18th day of October, 1988, to certify which witness my official seal.

Carolyn J. Rasmussen

NOTARY PUBLIC - State of Texas
Printed Name: Carolyn J. Rasmussen
My Commission Expires: 4-15-89

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2703

NAME OF COUNSEL: Harold D. Hammett

ADDRESS: 303 West 10th, Suite 300
Fort Worth, TX 76102-7071

TELEPHONE: (817)335-6133

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.

Oct. 11, 1988
Date

Bob Slagle
Signature

RESPONDENT'S NAME: Bob Slagle, Treasurer
Texas Democratic Party

ADDRESS: 815 Brazos, #200
Austin, TX 78701

HOME PHONE:

BUSINESS PHONE: (512)478-8746 (214)893-1107

90040300443

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 20, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. ~~Slagle~~ Bob:

This letter sets forth in full the agreement between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, as follows:

1. The DNC hereby designates the Texas Democratic Party as agent for the DNC for the exclusive purpose of making expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, up to the amount of one-hundred-twenty-five-thousand dollars ($125,000.00). The Texas Democratic Party hereby accepts such agency.

2. In exercising its authority pursuant to this Agreement, the Texas Democratic Party will comply with the limitations and reporting and other requirements of the Federal Election Campaign Act of 1971, as amended ("the Act") and the regulations promulgated thereunder.

3. The Texas Democratic Party will report to the DNC all such information as the DNC may request for the purpose of DNC's compliance with the requirements of the Act.

4. Notwithstanding the foregoing, the DNC may, by written notice to the Texas Democratic Party, reassume portions of the authority delegated to the Texas Democratic Party under this Agreement, to the extent that the Texas Democratic Party shall not then have made or committed to make such expenditures itself.

EXHIBIT 1

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: ______________________
Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: ______________________
Robert Slagle, Chairman

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 23, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. Slagle:

Reference is made to that certain letter agreement dated September 20, 1988, between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party (the "Agreement"), concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States.

That Agreement is modified as follows: In paragraph 1, the amount of "one-hundred-twenty-five thousand dollars ($125,000)" shall be amended to read "one-hundred-thirty-three-thousand ($133,000.00)."

All other terms and conditions of the Agreement shall remain in full force and effect.

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: ______________________
Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: ______________________
Robert Slagle, Chairman

EXHIBIT 2

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000

Texas Democratic Party

FOR IMMEDIATE RELEASE
September 21, 1988

FOR FURTHER INFORMATION
Contact: Ed Martin at
(512) 478-8746

Ed Martin, Executive Director of the Texas Democratic Party, issued the following statement today:

The Texas Democratic Party is beginning to air the first T.V. ad of the Presidential campaign aimed specifically at Texas voters.

Back in 1986, Bill Clements campaigned saying the reason we had no national energy policy was simply that the White House didn't answer the phone when the Democratic Governor called.

With Vice President Bentsen in office no phone call from the Governor will be needed to get help on energy policy or any other Texas issue because Bentsen will be there shaping that policy.

George Bush had 7½ years to get that done, but where was he when Texas needed help?

This "telephone" commercials was produced in Texas and paid for by the Texas Democratic Party under the presidential election spending authority of the Democratic National Committee, commonly called 441 a(d) authority, and in behalf of the Dukakis-Bentsen Committee.

EXHIBIT 3

815 Brazos, Suite 200/Austin, Texas 78701/(512) 478-8746

plm

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1988

Scott Blake Harris
Williams & Connolly
839 17th Street, N.W.
Washington, D.C. 20006

RE: MUR 2703
Dukakis/Bentsen
Committee, Inc. and
Robert Farmer, as
treasurer

Dear Mr. Harris:

This is in response to your letter dated October 21, 1988, which we received on October 21, 1988, requesting an extension of 15 days to respond to information supplemental to the complaint. 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 November 7, 1988.

If you have any questions, please contact Frania Monarski, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

cc: Jonathan B. Sallett
2255 M Street, N.W.
Washington, D.C. 20037

90040500448

OGC# 946

November 4, 1988

HAND DELIVERED

Lawrence N. Noble, Esquire
General Counsel
Federal Elections Commision
999 E Street, N.W.
Washington, D. C. 20463

Re: MUR 2703

Dear Mr. Noble:

This is letter is in response to the Complaint made against the Dukakis/Bentsen Committee, Inc. and Robert Farmer, as Treasurer, by the Republican Party of Texas.

The Texas Republican Party has complained that certain televised advertisements, paid for by the Texas Democratic Party, are in-kind contributions to the Dukakis/Bentsen Committee in violation of the Federal Elections Campaign Act. As further support for this charge, the Texas Republican Party submitted (as supplemental information) a press release from the director of the Dukakis/Bentsen campaign in Texas. That press release asserts that the advertisements in question will cease when Vice President Bush responds to them.

The Commission should conclude that there is no reason to believe that the Dukakis/Bentsen Campaign violated the Federal Election Campaign Act in connection with these advertisements. That statute, and related regulations, explicitly provide that a political party's national committee "may make expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party." 11 C.F.R. § 110.7(a)(1). See also 2 U.S.C. 441(a)(d). Moreover, the national committee "may make expenditures authorized by this section through any designated agent, including State . . . party committees." Id., § 110.7(a)(4).

As the Republican Party of Texas itself alleges, the advertisements in question were paid for by the Democratic Party of Texas. And, as the Democratic Party of Texas has demonstrated, it was properly designated as an agent of the Democratic National Committee for this purpose. The Federal Election Commission has recognized that expenditures of the sort involved here are not in-kind contributions when "the Party Committee actually pays a vendor." See FEC Campaign Guide for Political Committees (October 1985) at 11. There is no reason to believe that anyone other than the state committee in Texas paid the vendor.

Finally, the press release submitted as supplemental information adds nothing to the Complaint. Neither federal law nor regulation prohibits a Presidential candidate's campaign committee from coordinating with a party committee making expenditures of the kind involved here. Indeed, the Commission itself anticipates that such will often be the case. Id. at 10. As the Commission has said, such "expenditures are not considered contributions . . . ." and "they may be coordinated with a candidate . . . ." Id. In this case, there was such coordination. There is, however, no reason to believe that there was any violation of relevant laws or regulations.

For these reasons, the Complaint should be promptly dismissed.

Respectfully submitted,

Scott Harris

Scott Blake Harris
910 17th Street, N.W.
Washington, D. C. 20006
(202) 331-5556

Jonathan B. Sallet/SBH

Jonathan B. Sallet
2555 M Street, N.W.
Washington, D. C. 20037
(202) 293-6400

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 FEB 16 AM 9:05

EXECUTIVE SESSION
SENSITIVE
FEB 28 1989

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

FIRST GENERAL COUNSEL'S REPORT

MUR 2703
DATE COMPLAINT RECEIVED
BY OGC: 9/26/88
DATE OF NOTIFICATION TO
RESPONDENTS: 10/3/88
STAFF MEMBER: Frania Monarski

COMPLAINANT: Fred Meyer, Chairman of the Republican Party of Texas

RESPONDENTS: Texas Democratic Party and Bob Slagle, as treasurer

Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer

DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer

RELEVANT STATUTES:
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)
26 U.S.C. § 9003(b)(2)

INTERNAL REPORTS CHECKED: Disclosure Indexes

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF THE MATTER

On September 16, 1988, the Commission received a complaint from Fred Meyer, Chairman of the Republican Party of Texas, alleging that the Texas Democratic Party, Bob Slagle, as treasurer, and the Dukakis/Bentsen Committee, Inc., and Robert A. Farmer, as treasurer, violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Meyer contends that the Texas Democratic Party paid for a television advertisement attacking the candidacy of Vice President George Bush for President. Meyer

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alleges that from September 21, 1988 through September 25, 1988, this advertisement was aired at least fifty-two (52) times on six (6) television stations in Texas for a cost of $82,623. The broadcast criticizes the Vice President's position on various issues which are of particular importance to Texas voters. Meyer alleges that the television advertisement constitutes an illegal expenditure by the Texas Democratic Party on behalf of the Dukakis/Bentsen campaign. See 2 U.S.C. § 441a(f). Moreover, Meyer contends that the advertisement is also an illegal in-kind contribution to the Dukakis/Bentsen Committee, Inc., in violation of the Act. See 2 U.S.C. § 9003(b)(2). On October 5, 1988, Meyer filed a supplemental complaint with a letter from Tom Cosgrove, the Texas Director of Dukakis/Bentsen '88, to Lee Atwater, the Bush/Quayle '88 campaign manager, indicating that the Dukakis/Bentsen campaign would stop airing the advertisement in question when Vice President Bush responded to it.

On October 22, 1988, counsel for the Texas Democratic Party and Bob Slagle, as treasurer, submitted a response to the Commission denying the allegations in the complaint. The Committee also included two letters, dated September 20, 1988 and September 23, 1988 respectively, from Paul Kirk, Chairman of the Democratic National Committee (the "DNC"), to Robert Slagle, Chairman of the Texas Democratic Party, designating the Texas Democratic Party as agent for the DNC for the purpose of making up to $133,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. The Dukakis/Bentsen Committee, Inc., and Robert Farmer, as treasurer, through counsel, also filed a response with the Commission, on November 7, 1988, asserting that the DNC properly designated the Texas Democratic Party as agent for the purpose of making 2 U.S.C. § 441a(d) expenditures.

II. FACTUAL AND LEGAL ANALYSIS

The Act defines contributions and expenditures as anything of value including a gift, loan, or advance made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and 2 U.S.C. § 431(9)(A). Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or his authorized committee are considered in-kind contributions under the Act. 2 U.S.C. § 441a(a)(7)(B)(i). Multicandidate political committees may make up to $5,000 in contributions to any candidate for federal office or his authorized political committee. 2 U.S.C. § 441a(a)(2)(A). The Act provides that notwithstanding any other provisions of law with respect to limitations on expenditures or contributions, a national committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. 2 U.S.C. § 441a(d)(2).

The Act does not include a similar provision for a state party committee to make similar expenditures on behalf of a Presidential candidate. <u>See</u> 2 U.S.C. § 441a(d). Commission regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4).

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The national committee may spend up to two cents times the national voting age population on behalf of its Presidential candidate in a general election. 2 U.S.C. § 441a(d)(2). All coordinated party expenditures made by the national party committee or its designated state party committees are subject to one spending limit. 11 C.F.R. § 110.7(a). Party committees, however, may not make independent expenditures in connection with the general election campaign of a Presidential candidate. 11 C.F.R. § 110.7(a)(5). For the 1988 general election, the coordinated party expenditure limit for the DNC Services Corporation/Democratic National Committee (the "DNC") on behalf of the Dukakis/Bentsen campaign was $8,291,454. The DNC has reported a total of $7,563,043.85 in coordinated party expenditures on behalf of Democratic candidates through November 28, 1988.

Under the Presidential Election Campaign Fund Act (the "Fund Act"), a Presidential candidate may elect to receive public financing of his general election campaign. See generally 2 U.S.C. § 9001 et. seq., 11 C.F.R. § 9001.1 et. seq. In order to be eligible to receive public funds, the candidate must limit his spending to the amount of the federal grant and may not accept private contributions to defray qualified campaign expenses. 2 U.S.C. § 9003[illegible]. Section 441a(f) of Title 2 provides that committees may not make expenditures in excess of the limitations of 2 U.S.C. [illegible]a.

The Act requires that whenever any person, which includes a party committee (see 2 U.S.C. § 431(11)), makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication, if paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). If the communication is not authorized by a candidate, an authorized political committee of the candidate or its agents, it shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the instant matter, an advertisement clearly identifying Vice President Bush ran on fifty-two (52) occasions from September 21 through September 25, 1988 on six (6) Texas television stations. The advertisement stated, in part: "[W]hen the oil business [of Texas] collapsed for the lack of a national energy policy, where was George?...Now George Bush is calling on Texas to help. But where was George when we needed him?" The advertisement cost $82,623 and indicated that it was paid for by the Texas Democratic Party. The Texas Democratic Party submitted a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC to Robert Slagle, Chairman of the Texas Democratic Party, designating the Texas Democratic Party as agent for the DNC for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. The Texas Democratic Party also included a letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, amending the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d).

In its 1988 October Monthly Report, the DNC reported a $125,000 disbursement on September 20, 1988 and a $8,000 disbursement on September 23, 1988 to Yellin as in-kind contributions to the Texas Democratic Party for media expenditures. The DNC also reported numerous payments to Yellin Media as coordinated party expenditures on behalf of the Dukakis/Bentsen campaign pursuant to 2 U.S.C. § 441a(d). The Texas Democratic Party, in its 1988 October Quarterly Report, noted a $125,000 in-kind contribution on September 20, 1988 and a $8,000 in-kind contribution on September 23, 1988 from the DNC for the purchase of air time and television production. Moreover, on its F Schedule, the Texas Democratic Party reported the $125,000 and $8,000 as in-kind contributions received from the DNC for the purchase of air time and the production of television commercials on behalf of Dukakis/Bentsen, as disbursements to Yellin Media and as coordinated party expenditures as the designated agent of the DNC.

The responses submitted by the Dukakis/Bentsen Committee and the Texas Democratic Party do not explicitly state whether these disbursements to Yellin Media listed in their October Reports refer to the television advertisement in question although that is clearly implied in the responses. The advertisement was aired from September 21 through September 25, 1988 and the in-kind contributions from the DNC to the Texas Democratic Party were reported on September 20 and September 23, 1988. Therefore, from the disclosure reports and the responses provided by the Dukakis/Bentsen Committee and the Texas Democratic Party, it appears that although the DNC designated the Texas Democratic Party as its agent for the purpose of making coordinated party expenditures on behalf of Dukakis/Bentsen, the DNC actually paid for these advertisements and also reported the payments as Section 441a(d) expenditures.

If the DNC intended to designate the Texas Democratic Party as its agent for making coordinated party expenditures, it should have either transferred funds to the state party committee for it to spend or allowed the state party committee to use its own funds to make the expenditures. See FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981). In this case, the DNC designated a state party committee as its agent, but paid the vendor directly and reported the payments as Section 441a(d) expenditures. The DNC further reported the expenditures as in-kind contributions to the Texas Democratic Party. The Texas Democratic Party reported the payments as both in-kind contributions from the DNC and coordinated party expenditures made by the party. Because the DNC actually made the expenditures, it should have reported the expenditures as 441a(d) expenditures, not as in-kind contributions. Moreover, under these facts, the Texas Democratic Party should not have reported the expenditures as coordinated party expenditures or in-kind contributions from the DNC.

Based on the foregoing analysis, this Office recommends that the Commission find no reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 441a(f) by making expenditures in excess of the limitations of 2 U.S.C. § 441a. Furthermore, this Office recommends that the Commission also find no reason to believe that the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, violated 26 U.S.C. § 9003(b)(2) by accepting an illegal in-kind contribution from the Texas Democratic Party. This Office also recommends, however, that the Commission find reason to believe that the DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, and the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b) by misreporting these payments in question made on behalf of the Dukakis/Bentsen campaign as in-kind contributions and, in the case of the Texas Democratic Party, as coordinated party expenditures.

The Act requires that a political advertisement must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her committee. 2 U.S.C. § 441d. The television advertisement in question stated that it was paid for by the Texas Democratic Party. It did not, however, indicate whether or not it was authorized by any candidate. If the DNC had transferred the funds to the Texas Democratic Party who in turn paid the vendor or the Texas Democratic Party used its own funds to pay the vendor, then the Texas Democratic Party would be the correct party to appear in the disclaimer as the person who paid for the advertisement. It appears, however, that the DNC made arrangements with the vendor for the advertisement and made the actual payments to the vendor.

In this Office's view, Section 441d of the Act requires the identity of the person who actually paid for the advertisement. Therefore, in this matter, the disclaimer should have stated "Paid for by the Democratic National Committee and authorized by the Dukakis/Bentsen Committee, Inc.". Accordingly, this Office recommends that the Commission find reason to believe that the DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. § 441d by failing to include the appropriate disclaimer on the television advertisement in question. The DNC was not named as a respondent in the complaint in this matter; therefore, this violation is being treated as an internally generated matter.

III. RECOMMENDATIONS

1. Find no reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find no reason to believe that the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, violated 26 U.S.C. § 9003(b)(2).

3. Find reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b).

4. Find reason to believe that the DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d.

5. Approve the attached letters, Factual and Legal Analyses, Interrogatories and Request for Documents.

2/15/89
Date

By: [signature]
Lawrence M. Noble
General Counsel

Attachments
1. Responses
2. Disclosure Reports
3. Proposed Letters (3), Factual and Legal Analyses (2), Interrogatories and Request for Documents.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: FEBRUARY 21, 1989

SUBJECT: OBJECTIONS TO MUR 2703 - FIRST G. C. REPORT SIGNED FEBRUARY 15, 1989

The above-captioned document was circulated to the Commission on Thursday, February 16, 1989 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	X
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the meeting agenda for February 28, 1989.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Texas Democratic Party and Bob Slagle, as treasurer	)	
	)	
Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer	)	MUR 2703
	)	
DNC Services Corporation/ Democratic National Committee and Sharon Pratt Dixon, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 28, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2703:

1. Find no reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find no reason to believe that the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, violated 26 U.S.C. § 9003(b)(2).

3. Find reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b).

(continued)

4. Find reason to believe that the DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d.

5. Approve the letters, Factual and Legal Analyses, Interrogatories and Request for Documents as recommended in the General Counsel's report dated February 15, 1989.

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

Attest:

3-2-89
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 8, 1989

Scott Blake Harris
Williams & Connolly
839 17th Street, N.W.
Washington, D.C. 20006

RE: MUR 2703
Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer

Dear Mr. Harris:

On October 17, 1988, the Federal Election Commission notified your clients, the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, of a complaint alleging violations of certain sections of Chapters 95 and 96 of Title 26, United States Code.

On February 28, 1989, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer, violated 26 U.S.C. § 9003(b)(2). Accordingly, the Commission closed its file in this matter as it pertains to your clients.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Scott Blake Harris
Page 2

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Lawrence M. Noble
General Counsel

cc: Jonathan B. Sallet
Miller, Cassidy, Larocca & Lewin
2555 M Street, N.W.
Washington, D.C. 20037

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 8, 1989

Harold D. Hammett
Simon, Anisman, Doby, Wilson & Skillern
303 West 10th Street, Suite 300
Fort Worth, TX 76102

RE: MUR 2703
Texas Democratic Party and
Bob Slagle, as treasurer

Dear Mr. Hammett:

On October 17, 1989, the Federal Election Commission notified your clients, the Texas Democratic Party and Bob Slagle, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on February 28, 1989, found that there is reason to believe the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b), 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 Texas Democratic Party and Bob Slagle, as treasurer. 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 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 Texas Democratic Party and Bob Slagle, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Factual & Legal Analysis

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 8, 1989

Sharon Pratt Dixon, Treasurer
DNC Services Corporation/
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Sharon Pratt
Dixon, as treasurer

Dear Ms. Dixon:

On February 28, 1989, the Federal Election Commission found that there is reason to believe the DNC Services Corporation/Democratic National Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended ("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 Committee and you, as treasurer. 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 your 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 Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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

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.

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 investigation to be made public.

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

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Questions

jar6139/dnc/general/corres.89/0323fec.le
Thu Mar 23 09:06:34 1989

06C2270

Reed Smith Shaw & McClay

SUITE 900
1150 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036-4192
202-457-6100

TWX 440-339-RSSM UI
FAX 202-457-6113

WRITER'S DIRECT DIAL NUMBER

PITTSBURGH, PA
PHILADELPHIA, PA
HARRISBURG, PA
McLEAN, VA

March 23, 1989

89 MAR 24 AM 9:37

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

Attention: Office of General Counsel

Re: MUR 2703

Dear Sir or Madam:

On behalf of DNC Services Corporation/Democratic National Committee (the "DNC"), I write to respond to MUR 2703.

MUR 2703 concerns certain television advertisements aired by the Texas Democratic Party in September, 1988 in connection with the fall general election campaign. These advertisements pertained to the general election contest between the Democratic Presidential nominee, Governor Michael S. Dukakis, and the Republican Party Presidential nominee, Vice President George Bush. The Texas Democratic Party paid for these ads with contributions in-kind made to it by the DNC. The DNC's contributions to the Texas Democratic Party took the form of payments made by it on the latter's behalf to Yellin Media ("Yellin"), an agent acting on behalf of the Texas Democratic Party in placing the ads. The DNC reported these payments as contributions in-kind to the Texas Democratic Party, and the latter reported receipt of such contributions. According to the MUR, the disclosure on the ads said "Paid for by the Texas Democratic Party".

The Commission, in MUR 2703, has found reason to believe that the DNC violated Sections 434(b) and 441d of the Federal Election Campaign Act of 1971, as amended (the "Act"), with respect to these ads and the DNC's contributions to the Texas Democratic Party. The factual and legal analysis which accompanies the notification sent to the DNC regarding this matter in essence asserts that, because the Texas Democratic Party paid for these ads with funds furnished by the DNC, the ads should have contained the disclaimer "paid for by the Democratic National Committee" and that failure to do so constituted a violation of Section 441d.[1] In keeping with this, it further asserts that reporting those payments as contributions in-kind to the Texas Democratic Party was incorrect, in violation of Section 434(b). In both instances, the allegations made in the MUR misapprehend the facts and misapply the law. Even more importantly, the position taken in the MUR, if eventually sustained by the Commission, would seriously undermine important policies underlying the Act regarding contribution limitations.

As the attached answers to interrogatories reveal, the ads in question were prepared on behalf of the Texas Democratic

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1 In the MUR, the staff asserts that the DNC also violated Section 441d with respect to the advertisements in question because the disclaimer failed to state whether the ads were or were not authorized by Dukakis/Bentsen Committee, Inc. This is certainly a puzzling proposition since it seems passing strange -- and therefore not readily apparent that such is the case -- that the Act would require notice by a political party committee as to whether its activities are or are not "authorized" by its nominees. This is particularly true given that the regulations flatly prohibit party committees from making independent expenditures in support of their nominees for federal office and, therefore, irrebutably imply that all such expenditures are authorized. <u>See</u> 11 C.F.R. §§ 110.7(a)(5), 110.7(b)(4). However, without intending to concede that such indications of authorization are required in connection with a political party organization's expenditures under Section 441a(d) in support of its nominees, the DNC reserves its response to that assertion at this time. For the reasons set forth below, the DNC believes the MUR is misdirected in its initial thrust and that the ads properly disclosed that they were paid for by the Texas Democratic Party and not by the DNC. Therefore, this second allegation under Section 441d does not apply to it. The DNC respectfully requests, however, that it be permitted to address this point in a more fulsome fashion at a later time in this proceeding if the need should arise.

Party.[2] It initiated their preparation and the efforts to air them. Yellin was appointed its agent in this regard. Because the ads affected the Presidential contest, the Texas Democratic Party approached the DNC and asked that the DNC delegate to it a portion of the DNC's Presidential 441a(d) authority so that the Texas Party would not otherwise violate the prohibition on making contributions to the Presidential nominee if it aired them. Further, because the Texas Democratic Party was short of funds, it also asked whether the DNC could provide it financial assistance with which to run the ads. In this regard, and because it wished to air the ads as quickly as possible, the Texas Democratic Party also asked whether the DNC, in order to save time, could provide this assistance by paying to Yellin on behalf of the Texas Party the funds which the Texas Party needed in order to air the ads. In other words, the Texas Party asked the DNC to pay its (i.e., the Texas Party's) bill. The DNC did so,[3] and, consistent with the underlying facts, reported the payment made to Yellin as a contribution in-kind to the Texas Democratic Party. In addition, per the request made by the Texas Party, it delegated to the Texas Democratic Party a portion of its Presidential 441a(d) authority. It is the DNC's understanding that the Texas Democratic Party, in turn, reported the payments by the DNC to Yellin as contributions in kind to it and corresponding expenditures by it in connection with the ads and that it further reported these expenditures as Presidential § 441a(d) expenditures.

In these circumstances, there are no violations of § 441d or § 434(b). It is a cardinal principle under the Act that expenditures made on behalf of a political committee constitute contributions to that political committee. This is true if one organization pays an obligation of a political committee. See

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2 The attached answers to interrogatories are executed by Mark Bohannon. Although Mr. Bohannon is no longer an employee of the DNC, he was an employee of the DNC at the time the subject activities took place and was the DNC's operations director referred to in the answer to the Interrogatory No. 1.

3 As the answers to interrogatories describe, the DNC furnished the assistance by authorizing Yellin to use funds which the DNC had previously forwarded to her for its own account to buy media time as requested by and on behalf of the Texas Democratic Party.

e.g., A.O. 1985-29, 1 Fed. Elect. Camp. Fin. Guide (CCH) ¶ 5829 at 11,209 & n.5 (November 4, 1985). It is also true if the political committee "accepts" the "fruits" of the other's activities. See A.O. 1980-46 1 Fed. Elect. Camp. Fin. Guide (CCH) ¶ 5508 at 10,589, 3rd para. (June 25, 1980). And, in the context of candidates, it is required by the language of the Act itself if the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate's agents.[4] Indeed, if that were not the rule, the limitations and prohibitions of the Act could be easily avoided or evaded. Consequently, the Commission has enforced that principle with great regularity and strictness. See, e.g., A.O. 1983-23, 1 Fed. Elect. Camp. Fin. Guide (CCH) ¶ 5728 (September 26, 1983) (corporate hospitality suite at national nominating convention not a prohibited contribution in-kind in light of representation that proposal not made at request or direction of party officials). See also A.O. 1985-14, 1 Fed. Elect. Camp. Fin. Guide ¶ 5819 (May 30, 1985) (conclusion that "generic" ads were not allocable under § 441a(d) premised on representation that they were not made in consultation or cooperation with, or at request or suggestion of, affected candidates).

In light of the facts outlined above, it would be contrary to the principles underlying the Act to conclude that the DNC should be considered to have "paid for" the ads rather than to have made contributions in-kind to the Texas Party. As is apparent from the face of the ads, they were designed by Texans, with Texas in mind. The DNC had nothing to do with their preparation or with the decision whether, when and where to air them. Indeed, its only knowledge of the content of the ads comes from the transcription thereof attached to the notice of MUR 2703 sent to it by the Commission. At the request of the Texas Democratic Party, the DNC permitted Yellin to use funds it had previously advanced to Yellin in order to pay the Texas Party's bills so that the Texas Party could air ads which it wanted to be aired. Given these circumstances -- the derivation of the ads, the Texas Party's request for help, the DNC's passive role vis-a-vis the Texas party in connection therewith, and its lack of

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4 Expenditures are not "independent" if they are made in consultation or in cooperation with another political committee. Instead, such expenditures are viewed as contributions to that political committee. Compare 11 C.F.R. § 109.1(a) with 11 C.F.R. § 109.1(c).

control over whether, when and where to air them -- the payments by the DNC to Yellin can only be seen as contributions in-kind by the DNC to the Texas Democratic Party. Indeed, if the Commission were to hold that the ads in question were "paid for" by the DNC, it not only would treat the DNC unjustly but also would substantially eviscerate the contribution prohibitions and limitations, particularly with respect to independent expenditures, for such a conclusion could easily be exploited by those who wish to provide assistance to various political committees but not have such assistance counted as contributions thereto.

Accordingly, the DNC reported its expenditures in a proper fashion, and in a fashion which most forthrightly and accurately reflected the underlying facts.[5] As a result, the position taken in MUR 2703 is of questionable validity at best. Moreover, even if the position taken therein is sustained, the DNC's alleged violations caused no harm to the purposes underlying the Act. The sponsor of the ad was not hidden: based on the transcript thereof furnished by the Commission to the DNC, it would have been abundantly clear to any observer that the ad was a partisan ad aired by a Democratic Party entity. The financing of the ad was not hidden: any interested observer could easily have determined how and when the Texas Democratic Party paid for the ad. Section 441a(d) limits were not violated: the DNC properly delegated to the Texas Democratic Party appropriate authority thereunder. In short, even if the position asserted in MUR 2703 were sustained, the alleged violations did not jeopardize the purposes of the Act. At worst, they represented a good faith effort by the DNC to comply with the Act when the policies underlying the limitations on contributions may (if the allegations in MUR 2703 are sustained) conflict with those underlying the disclaimer requirements.

For all of these reasons, MUR 2703 should be dismissed as to the DNC and no further action taken with respect thereto. The staff, in its memorandum accompanying MUR 2703, itself concludes that there would have been no violation of the Act if the DNC had sent the funds in question directly to the Texas Democratic Party, which then, in turn, sent them immediately to

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5 Indeed, in light of where the ads originated, it would have been irresponsible for the DNC if it had indicated that, somehow, the ads should be attributed to it.

Yellin. Moreover, it is undoubtedly true that it would have reached the same conclusion if the DNC had paid the Texas Party's bill after the ads had been aired. Given that, there is no reason in law or policy why a payment by the DNC to Yellin in discharge of the Texas Party's obligation thereto -- which is equivalent in all essential respects to a contribution directly to the Texas Party -- should be treated any differently.

Respectfully submitted,

Joseph A. Rieser, Jr.

Joseph A. Rieser, Jr.

JAR:mgn

STATEMENT OF DESIGNATION OF COUNSEL

89 MAR 24 AM 9:40

MUR 2703

NAME OF COUNSEL: Joseph A. Rieser, Jr. (Only for purposes of the response)
Christine Varney
Hartina Flournoy

ADDRESS: 430 South Capitol Street, S.E.
Washington, D.C. 20003

TELEPHONE: (202) 863-8166

The above named individuals are hereby designated as counsel for DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer (collectively, the "DNC"), and are authorized to receive any notifications and other communications from the Commission and to act on behalf of the DNC before the Commission.

By: ______________________

Date: 3-16-89

RESPONDENT'S NAME: DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer.

ADDRESS: 430 South Capitol Street, S.E.
Washington, D.C. 20003

BUSINESS PHONE: (202) 863-8166

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of MUR 2703	)

ANSWERS OF RESPONDENT DNC SERVICES CORPORATION TO INTERROGATORIES

"1. Describe in detail the procedure by which the DNC purchased media advertisements from Yellin Media on behalf of the Texas Democratic Party.

a. State whether the DNC made payments directly to the vendor, transferred funds to the Texas Democratic Party or authorized the Texas Democratic Party to use its own funds to purchase the advertisements. State whether the DNC reported all payments as 441a(d) expenditures."

Answer: With respect to the advertisements that are the subject of this MUR, the DNC's operations director was contacted by the Texas Democratic Party (the "State Party"), which wanted to run television advertisements in connection with the general election of Dukakis/ Bentsen in Texas. The State Party had already decided on the content of the advertisements and the DNC understood that the advertisements would be produced on behalf of the State Party by a firm in Texas.

It was understood by the State Party that no funds could be spent by the State Party for such advertising without a proper designation by the DNC of the State Party as the DNC's agent for making section 441a(d) expenditures on behalf of Dukakis/Bentsen. The necessary agency designation was then made, in writing. The State Party further requested that the DNC provide the State Party with funds for the production of the commercials and the broadcast time. The State Party also asked if the DNC could provide this financial assistance in as expeditious a fashion as possible.

The DNC had on account with Yellin Media, a media buying firm, funds for use (but not yet used) in purchasing time for television and radio commercials to be run by the DNC. In light of the need for prompt assistance to the State Party and after discussions with it, the DNC decided that the most logical approach was to contribute to the State Party some of the unused funds it had on account with Yellin by authorizing Yellin to spend these funds as directed and requested by the State Party, rather than transferring funds to the State Party to be used for these purposes. The State Party would instruct Yellin, in writing, the manner in which Yellin should use the funds made available by the DNC for the purchase of time on the State Party's behalf. (Later, Yellin was also instructed to use some funds to pay production costs). A copy of a letter to Yellin from the State Party authorizing Yelling to accept and use those funds as the State Party's agent is attached hereto. Other than permitting Yellin to use the DNC's funds in paying for the State Party's ads, the DNC had no other role in their preparation or broadcast.

After discussions between the DNC and the State Party, the DNC and State Party concluded that, since the DNC was making funds on deposit with Yellin available for use by the State Party with respect to its commercials, the transaction should be treated as an in-kind contribution by the DNC to the State Party, as well as a section 441a(d) expenditure by the State Party pursuant to the agency designation letter. Consequently, the DNC did not report these expenditures as section 441a(d) expenditures by the DNC, but rather told the Texas State Party that the State Party should report the expenditures on the State Party's own reports, showing the DNC as the designating committee in accordance with the instructions for Schedule F and Line 23.

2. "State whether the advertisements purchased by the DNC from Yellin Media on behalf of the Texas Democratic Party included the attached advertisement. State whether the advertisements purchased by the DNC included any other advertisements in addition to the attached advertisement. Provide copies of scripts for all advertisements purchased from Yellin Media and reported as in-kind contributions to the Texas Democratic Party."

Answer: The DNC does not know whether the advertisements purchased by the State Party using the funds provided by the DNC to Yellin included the attached. The DNC does not know whether the funds were used to purchase time for any other advertisements, since the advertisements were ordered (from the production company) and approved by the State Party, not by the DNC.

3. "State the total amount of expenditures made by the DNC to Yellin Media on behalf of the Texas Democratic Party. State whether the DNC reported all such expenditures as 441a(d) expenditures."

Answer: The total amount of funds from the DNC used by Yellin for the advertisements which are the subject of this MUR was $133,000. The DNC did not report <u>any</u> of this as a 441a(d) expenditure because the DNC regarded these as expenditures by the State Party pursuant to the delegation of 441a(d) authority.

4. "Provide copies of all documents relating to the above questions"

Answer: Copies of such documents are attached hereto.

I hereby swear that the foregoing answers are true and correct to the best of my information, knowledge and belief.

Mark Bohannon

MARK BOHANNON

Subscribed and sworn to before me this 23rd day of March, 1989.

Virginia R. Cummings

Notary Public

VIRGINIA R. CUMMINGS
Notary Public, District of Columbia
My Commission Expires July 31, 1989

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Texas Democratic Party

September 26, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of paying production costs for television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $8,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Bob Slagle
Chairman
Texas Democratic Party

90040000430

September 20, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of purchasing, on our behalf, television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $125,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Robert Slagle
Chairman
Texas Democratic Party

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 20, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. ~~Slagle~~ Bob:

This letter sets forth in full the agreement between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, as follows:

1. The DNC hereby designates the Texas Democratic Party as agent for the DNC for the exclusive purpose of making expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, up to the amount of one-hundred-twenty-five-thousand dollars ($125,000.00). The Texas Democratic Party hereby accepts such agency.

2. In exercising its authority pursuant to this Agreement, the Texas Democratic Party will comply with the limitations and reporting and other requirements of the Federal Election Campaign Act of 1971, as amended ("the Act") and the regulations promulgated thereunder.

3. The Texas Democratic Party will report to the DNC all such information as the DNC may request for the purpose of DNC's compliance with the requirements of the Act.

4. Notwithstanding the foregoing, the DNC may, by written notice to the Texas Democratic Party, reassume portions of the authority delegated to the Texas Democratic Party under this Agreement, to the extent that the Texas Democratic Party shall not then have made or committed to make such expenditures itself.

EXHIBIT 1

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: Paul G. Kirk Jr.
Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: Bob Slagle
Robert Slagle, Chairman

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 23, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. Slagle:

Reference is made to that certain letter agreement dated September 20, 1988, between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party (the "Agreement"), concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States.

That Agreement is modified as follows: In paragraph 1, the amount of "one-hundred-twenty-five thousand dollars ($125,000)" shall be amended to read "one-hundred-thirty-three-thousand ($133,000.00)."

All other terms and conditions of the Agreement shall remain in full force and effect.

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: Paul G. Kirk, Jr.
-Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: Bob Slagle
Robert Slagle, Chairman

EXHIBIT 2

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RECEIVED
FEDERAL ELECTION COMMISSION

89 MAR 21 AM 9:26

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE
EXECUTIVE SESSION
MAR 28 1989

In the Matter of DNC Services Corporation/ Democratic National Committee and Sharon Pratt Dixon, as treasurer	))))))	MUR 2703

GENERAL COUNSEL'S REPORT

On February 28, 1989, the Commission found reason to believe that the DNC Services Corporation/Democratic National Committee (the "DNC") and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d. Prior to that time, this Office regularly checked the DNC disclosure reports to determine whether the DNC filed an amended Statement of Organization noting a change in its treasurer. After the DNC received the notification letter, it contacted this Office to inform it that the DNC had in fact acquired a new treasurer, Robert A. Farmer, and had filed an amended Statement of Organization with the Commission. Although we cannot access the data base for the 1989-90 election cycle, this Office managed to locate a copy of the amended Statement of Organization which was filed on February 17, 1989, eleven days before the Commission found reason to believe in this matter. The amended Statement of Organization was entered into the data base for the 1989-90 election cycle on February 23, 1989. Therefore, in order for the Commission's finding to reflect the treasurer of record on February 28, 1989, this Office recommends that the Commission find reason to believe that Robert A. Farmer, as treasurer of the DNC Services Corporation/Democratic National Committee violated 2 U.S.C. §§ 434(b) and 441d and approve the attached letter. Furthermore, this Office recommends that the Commission take no further action against Sharon Pratt Dixon, as treasurer.

RECOMMENDATIONS

1. Find reason to believe that Robert A. Farmer, as treasurer of the DNC Services Corporation/Democratic National Committee, violated 2 U.S.C. §§ 434(b) and 441d.

2. Take no further action in this matter against Sharon Pratt Dixon, the former treasurer of the DNC Services Corporation/Democratic National Committee.

3. Approve the proposed letter and Factual and Legal Analysis.

3/20/89
Date

Lawrence M. Noble
General Counsel

Attachments
1. Amended Statement of Organization.
2. Proposed letter and Factual and Legal Analysis.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: MARCH 23, 1989

SUBJECT: OBJECTION TO MUR 2703 - General Counsel's Report
Signed March 20, 1989

The above-captioned document was circulated to the Commission on Tuesday, March 21, 1989 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	
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the meeting agenda for March 28, 1989.

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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/	)	
Democratic National Committee	)	**MUR 2703**
and Sharon Pratt Dixon, as	)	
treasurer	)	

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session on March 28, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2703:

1. Find reason to believe that Robert A. Farmer, as treasurer of the DNC Services Corporation/Democratic National Committee, violated 2 U.S.C. §§ 434(b) and 441d.

2. Take no further action in this matter against Sharon Pratt Dixon, the former treasurer of the DNC Services Corporation/Democratic National Committee.

3. Approve the proposed letter and Factual and Legal Analysis as recommended in the General Counsel's report dated March 20, 1989.

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

Attest:

March 29, 1989
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 3, 1989

Robert A. Farmer, Treasurer
DNC Services Corporation/
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and
Robert A. Farmer, as
treasurer

Dear Mr. Farmer:

On February 28, 1989, the Federal Election Commission found reason to believe that the DNC Services Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 28, 1989, the Commission determined to take no further action against Sharon Pratt Dixon, since she is not the current treasurer of record. Accordingly, because you were substituted as treasurer on February 17, 1989, the Commission has found that there is reason to believe that you, in your capacity as treasurer of the DNC Services Corporation/Democratic National Committee, violated 2 U.S.C. §§ 434(b) and 441d. The Factual and Legal Analysis which formed the 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 Committee and you, as treasurer. 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 within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

Robert A. Farmer
Page 2

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

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

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

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.

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 Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Designation of Counsel Form
Factual & Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: **Robert A. Farmer, as treasurer of the DNC Services Corporation/ Democratic National Committee** **MUR 2703**

The Act defines contributions and expenditures as anything of value including a gift, loan, or advance made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and 2 U.S.C. § 431(9)(A). Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or his authorized committee are considered in-kind contributions under the Act. 2 U.S.C. § 441a(a)(7)(B)(i). Multicandidate political committees may make up to $5,000 in contributions to any candidate for federal office or his authorized political committee. 2 U.S.C. § 441a(a)(2)(A). The Act provides that notwithstanding any other provisions of law with respect to limitations on expenditures or contributions, a national committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. 2 U.S.C. § 441a(d)(2).

The Act does not include a similar provision for a state party committee to make similar expenditures on behalf of a Presidential candidate. <u>See</u> 2 U.S.C. § 441a(d). Commission regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4).

The national committee may spend up to two cents times the national voting age population on behalf of its Presidential candidate in a general election. 2 U.S.C. § 441a(d)(2). All coordinated party expenditures made by the national party committee or its designated state party committees are subject to one spending limit. 11 C.F.R. § 110.7(a). Party committees, however, may not make independent expenditures in connection with the general election campaign of a Presidential candidate. 11 C.F.R. § 110.7(a)(5). For the 1988 general election, the coordinated party expenditure limit for the DNC Services Corporation/Democratic National Committee (the "DNC") on behalf of the Dukakis/Bentsen campaign was $8,291,454. The DNC has reported a total of $7,563,043.85 in coordinated party expenditures on behalf of Democratic candidates through November 28, 1988.

The Act requires that whenever any person, which includes a party committee (see 2 U.S.C. § 431(11)), makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication, if paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). If the communication is not authorized by a candidate, an authorized political committee of the candidate or its agents, it shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the instant matter, an advertisement clearly identifying Vice President Bush ran on fifty-two (52) occasions from September 21 through September 25, 1988 on six (6) Texas television stations. The advertisement stated, in part: "[W]hen the oil business [of Texas] collapsed for the lack of a national energy policy, where was George?...Now George Bush is calling on Texas to help. But where was George when we needed him?" The advertisement cost $82,623 and indicated that it was paid for by the Texas Democratic Party. In a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. In a second letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d).

In its 1988 October Monthly Report, the DNC reported a $125,000 disbursement on September 20, 1988 and a $8,000 disbursement on September 23, 1988 to Yellin as in-kind contributions to the Texas Democratic Party for media expenditures. The Texas Democratic Party, in its 1988 October Quarterly Report, noted a $125,000 in-kind contribution on September 20, 1988 and a $8,000 in-kind contribution on September 23, 1988 from the DNC for the purchase of air time and television production. Moreover, on its F Schedule, the Texas Democratic Party reported the $125,000 and $8,000 as in-kind contributions received from the DNC for the purchase of air time and the production of television commercials on behalf of Dukakis/Bentsen, as disbursements to Yellin Media and as coordinated party expenditures made as the designated agent of the DNC.

The advertisement in question was aired from September 21 through September 25, 1988 and the in-kind contributions from the DNC to the Texas Democratic Party were reported on September 20 and September 23, 1988. Therefore, it appears that although the DNC designated the Texas Democratic Party as its agent for the purpose of making coordinated party expenditures on behalf of Dukakis/Bentsen, the DNC actually paid for these advertisements and may have also reported the payments as Section 441a(d) expenditures.

If the DNC intended to designate the Texas Democratic Party as its agent for making coordinated party expenditures, it should have either transferred funds to the state party committee for it to spend or allowed the state party committee to use its own funds to make the expenditures. See FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981). In this case, the DNC designated a state party committee as its agent, but paid the vendor directly and may have reported the payments as a Section 441a(d) expenditures. The DNC also reported the expenditures as in-kind contributions to the Texas Democratic Party. The Texas Democratic Party reported the payments as both in-kind contributions from the DNC and coordinated party expenditures made by the party. Because the DNC actually made the expenditures, it should have reported the expenditures as 441a(d) expenditures and not also as in-kind contributions. Therefore, based on the foregoing analysis, there is reason to believe that Robert A. Farmer, as treasurer of the DNC Services Corporation/Democratic National Committee, violated 2 U.S.C. § 434(b) by misreporting these payments in question made on behalf of the Dukakis/Bentsen campaign as in-kind contributions.

The Act requires that a political advertisement must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her committee. 2 U.S.C. § 441d. The television advertisement in question stated that it was paid for by the Texas Democratic Party. It did not, however, indicate whether or not it was authorized by any candidate. If the DNC had transferred the funds to the Texas Democratic Party who in turn paid the vendor or the Texas Democratic Party used its own funds to pay the vendor, then the Texas Democratic Party would be the correct party to appear in the disclaimer as the person who paid for the advertisement. It appears, however, that the DNC made arrangements with the vendor for the advertisement and made the actual payments to the vendor.

Section 441d of the Act requires the identity of the person who actually paid for the advertisement. Therefore, in this matter, the disclaimer should have stated "Paid for by the Democratic National Committee and authorized by the Dukakis/Bentsen Committee, Inc.". Therefore, there is reason to believe that Robert A. Farmer, as treasurer of the DNC Services Corporation/Democratic National Committee, violated 2 U.S.C. § 441d by failing to include the appropriate disclaimer on the television advertisement in question.

OGC 2495

RECEIVED FEDERAL ELECTION COMMISSION

89 APR 17 PM 4:11

RECEIVED

89 APR 17 PM 2:09

SIMON, ANISMAN, DOBY, WILSON & SKILLERN

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS
P. O. BOX 17047
300 PROFESSIONAL BUILDING
303 WEST TENTH
FORT WORTH, TEXAS 76102-7071

HAROLD D. HAMMETT, P.C.
OF COUNSEL TO THE FIRM

RICHARD U. SIMON (1907-1975)
HENRY W. SIMON (1910-1980)

(817) 335-6133
METRO 429-3245

TELEFAX NO.
METRO (817) 429-5390

April 14, 1989

Danny L. McDonald, Chairman
Attn: Frania Monarski,
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

VIA FEDERAL EXPRESS

Re: MUR 2703: Texas Democratic Party and Bob Slagle, as Treasurer

Dear Sir:

Following my telephone conversation with Frania Monarski, this is to request that the information contained in this letter and the attached Affidavit of Ed Martin, Executive Director of the Texas Democratic Party, be considered in response to your letter to me dated March 8, 1989. As I explained to Ms. Monarski, I had to undergo serious emergency abdominal surgery on March 8, 1989, and was still in the hospital when your letter arrived. Although I was dismissed from the hospital on March 13th, I was under doctor's instructions not to go to my office for any type of work until March 29, 1989, and then only on a half-time basis for approximately another two weeks. During that time my secretary brought me your letter after I checked out of the hospital, but I inadvertently misplaced it and did not find it until the day I called Ms. Monarski. I apologized for the oversight, and stated that I would wish some additional time to supply further information.

As stated in the attached Affidavit of Ed Martin, the authorization by the Democratic National Committee to Harriett Yellin, Inc., to disburse $133,000.00 which the DNC had deposited with Yellin was treated by all parties as having isolated those funds under the control of the Texas Democratic Party, the same as if they had been deposited in a bank account under the exclusive control of the Texas Democratic Party. The method which the Texas Democratic Party reported these expenditures was an attempt to accurately, honestly and legally give full disclosure as to what actually happened.

It appears to me that the case cited in the Factual and Legal Analysis supports our position. Federal Election Commission v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 34; 70 L.Ed.2d 23, 31 (1981) held, in part, that the Act does not preclude a state party from designating a national senatorial campaign committee as its agent for the purpose of making campaign expenditures. Similarly, neither the Act nor 11 C.F.R. Sect. 110.7 precludes the Democratic National Committee's and the Texas Democratic Party's agreement with Yellin for Yellin to act as a depository of DNC funds already in its possession, after control over expenditure of those funds have been passed to the Texas Democratic Party the same as if they were deposited in a bank account under the state party's exclusive control.

Therefore, we respectfully request that the Commission reconsider its finding on February 28, 1989, that there is reason to believe that the Texas Democratic Party and Bob Slagle, as Treasurer, violated 2 U.S.C. Sect. 434(b).

If, after receiving these comments and the attached Affidavit of Ed Martin, the Commission still feels that some action should be taken against the Texas Democratic Party and Bob Slagle, as Treasurer, then this is to request pre-probable cause conciliation.

Thank you for your consideration of these matters. Again, I apologize for my delay in transmitting them to you.

Respectfully submitted,

Harold D. Hammett

Harold D. Hammett
Attorney for Texas Democratic Party

HDH:cjr

cc w/encl: Bob Slagle
Ed Martin

AFFIDAVIT OF ED MARTIN

BEFORE ME, the undersigned authority, on this day personally appeared ED MARTIN, who, first being by me duly sworn, upon his oath stated as follows:

"My name is Ed Martin. I am a resident of Austin, Texas, and am the Executive Director of the Texas Democratic Party, and have had that position continuously since January, 1986. In September, 1988, I and Bob Slagle, Chairman of the Texas Democratic Party, frequently conferred about the timing and content of political advertisements made the subject of Federal Election Commission MUR 2703.

"While in my office in Austin, Texas, I participated in long-distance telephone conversations with Harriett Yellin in Boston, Massachusetts, concerning such advertisements. I had personal knowledge of the letters under the signature of Bob Slagle, Chairman of the Texas Democratic Party, to Ms. Yellin of September 20, 1988 (Exhibit 1 attached hereto) and September 26, 1988 (Exhibit 2 attached hereto).

"Ms. Yellin informed me that she had received authorization from the Democratic National Committee to designate $125,000.00 (later raised to $133,000.00) previously received from the Democratic National Committee and on deposit in the bank account of Harriett Yellin, Inc., to be spent as instructed by the Texas Democratic Party. Subsequently, I, in consultation with Chairman Bob Slagle, informed her of our approval of the content and timing of such television advertisements. In view of the shortness of time, the funds in Yellin's possession, earmarked for the Texas Democratic Party, were the same thing as an advance deposit. None of us saw any reason to go through the ceremony of having funds transferred to the Texas Democratic Party and then having the Texas Democratic Party transfer them to Yellin. The expenditures were reported as they were because the decisions about whether to spend them, and how, were made by the Texas Democratic Party. The Democratic National Committee had no control over the content and timing of the broadcast of the commercials. When both Yellin and the DNC agreed that the funds on deposit in Yellin's account could be disbursed at the instruction of the Texas Democratic Party, Yellin assumed and performed the additional role of being the agent for the Texas Democratic Party for the disbursal of this fund, just as a bank would have been if the extra time-consuming step of the double transfer of the funds had occurred. Under this binding agreement, the Texas Democratic Party had control over the $133,000.00 blocked for this purpose in Yellin's account in the same way as if that same amount had been deposited in the Texas Democratic Party's bank account. These expenditures were reported by the Texas Democratic Party the way they were reported because it was felt this was the best way to comply with both the letter and spirit of the law in giving disclosure about source of the funds and the Texas Democratic Party's control over the timing and results of their expenditure."

Ed Martin

ED MARTIN

SWORN TO AND SUBSCRIBED BEFORE ME by ED MARTIN on this the 13th day of April, 1989, to certify which witness my official seal of office.

NOTARY PUBLIC - State of Texas
Printed Name: MARY R MOREY
Commission Expires: 11/23/91

September 20, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of purchasing, on our behalf, television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $125,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Robert Slagle
Chairman
Texas Democratic Party

EXHIBIT 1

Texas Democratic Party

September 26, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of paying production costs for television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $8,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Bob Slagle
Chairman
Texas Democratic Party

EXHIBIT 2

815 Brazos, Suite 200/Austin, Texas 78701/(512) 478-8746

FEDERAL ELECTION COMMISSION
SECRETARIAT

89 JUL 11 AM 10:03

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

EXECUTIVE SESSION

JUL 18 1989

In the Matter of	)	
	)	
DNC Services Corporation/ Democratic National Committee and Robert A. Farmer, as treasurer	)	MUR 2703
	)	
Texas Democratic Party and Bob Slagle, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. GENERATION OF MATTER

On September 16, 1988, Fred Meyer, Chairman of the Republican Party of Texas, submitted a complaint to the Commission alleging that the Texas Democratic Party and Bob Slagle, as treasurer, violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Meyer contended that the Texas Democratic Party paid for a television advertisement attacking the candidacy of Vice President George Bush for President. On October 5, 1988, Meyer filed a supplemental complaint. On October 22, 1988, counsel for the Texas Democratic Party and Bob Slagle, as treasurer, submitted a response to the Commission denying the allegations in the complaint.

On February 28, 1989, the Commission found reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b) by misreporting the payments for these advertisements as coordinated party expenditures and in-kind contributions from the DNC. The Commission further found that there was no reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 441a(f). The Commission also found reason to believe that the DNC Services

Corporation/Democratic National Committee and Sharon Pratt Dixon, as treasurer, violated 2 U.S.C. § 434(b) by misreporting the payments for the advertisements as in-kind contributions to the Texas Democratic Party and 2 U.S.C. § 441d by failing to include the appropriate disclaimer on the advertisements indicating whether or not they were authorized by the Dukakis/Bentsen Committee, Inc. On March 28, 1989, the Commission substituted Robert A. Farmer, the new treasurer of the DNC, for Sharon Pratt Dixon in this matter.

On March 24, 1989, the DNC filed a response to the Commission's findings and requested that no further action be taken in this matter. On April 17, 1989, the Texas Democratic Party submitted an affidavit of Ed Martin, the Executive Director and requested pre-probable cause conciliation in this matter.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Act defines contributions and expenditures as anything of value including a gift, loan, or advance made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and 2 U.S.C. § 431(9)(A). Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or his authorized committee are considered in-kind contributions under the Act. 2 U.S.C. § 441a(a)(7)(B)(i). Multicandidate political committees may make up to $5,000 in contributions to any candidate for federal office or his authorized political committee. 2 U.S.C. § 441a(a)(2)(A).

The Act provides that notwithstanding any other provisions of law with respect to limitations on expenditures or contributions, a national committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. 2 U.S.C. § 441a(d)(2).

The Act does not include a similar provision for a state party committee to make similar expenditures on behalf of a Presidential candidate. See 2 U.S.C. § 441a(d). Commission regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4). The national committee may spend up to two cents times the national voting age population on behalf of its Presidential candidate in a general election. 2 U.S.C. § 441a(d)(2). All coordinated party expenditures made by the national party committee or its designated state party committees are subject to one spending limit. 11 C.F.R. § 110.7(a). Party committees, however, may not make independent expenditures in connection with the general election campaign of a Presidential candidate. 11 C.F.R. § 110.7(a)(5). For the 1988 general election, the coordinated party expenditure limit for the DNC Services Corporation/Democratic National Committee (the "DNC") on behalf of the Dukakis/Bentsen campaign was $8,291,454. The DNC has reported a total of $8,038,522.18 in coordinated party expenditures on behalf of Democratic candidates in its amended 1988 Year End Report.

The Act requires that when any person, which includes a party committee (<u>see</u> 2 U.S.C. § 431(11)), makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication, if paid for and authorized by the candidate, an authorized political committee of the candidate or agents of the candidate, must clearly state that it was paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). If the communication is paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication is paid for by such persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). If the communication is not authorized by a candidate, an authorized political committee of the candidate or its agents, it shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

B. <u>Analysis</u>

In the instant matter, the Texas Democratic Party prepared television advertisements in opposition to George Bush and asked the DNC to delegate part of its 441a(d) authority to the Texas Democratic Party to pay for the cost of the advertisements. In a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC, to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. In a letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d).

In order to save time and get the advertisements out quickly, the Texas Democratic Party asked the DNC to provide financial assistance by making payments for the advertisements to Yellin Media on behalf of the Texas Democratic Party, thus in effect having the DNC pay its bill with Yellin Media. The DNC states that it responded by permitting Yellin Media to use the DNC's funds already on deposit to pay for the advertisements of the Texas Democratic Party. In a letter from Bob Slagle to Harriett Yellin, dated September 20, 1988, the Texas Democratic Party authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of purchasing television advertisements for the benefit of the Democratic Ticket in Texas. The letter further noted that the DNC "will transfer to us [the Texas Democratic Party], through you [Yellin Media] as our agent, $125,000 from its federal account...." In a second letter, dated September 26, 1988, Bob Slagle authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of paying production costs for television advertising. The letter also indicated that the Texas Democratic Party anticipated that the DNC would transfer an additional $8,000 to the Texas Democratic Party through Yellin Media.

The television advertisement in question ran on fifty-two (52) occasions from September 21 through September 25, 1988 on six (6) Texas television stations. The advertisement indicated that it was paid for by the Texas Democratic Party and stated, in part:

> [W]hen the oil business [of Texas] collapsed for the lack of a national energy policy, where was George?...Now George Bush is calling on Texas to help. But where was George when we needed him?

In its 1988 October Monthly Report, the DNC reported a $125,000 disbursement on September 20, 1988 and a $8,000 disbursement on September 23, 1988 to Yellin Media as in-kind contributions to the Texas Democratic Party for media expenditures. The Texas Democratic Party, in its 1988 October Quarterly Report, noted a $125,000 in-kind contribution on September 20, 1988 and a $8,000 in-kind contribution on September 23, 1988 from the DNC for the purchase of air time and television production. Moreover, on its F Schedule, the Texas Democratic Party reported the $125,000 and $8,000 as in-kind contributions received from the DNC for the purchase of air time and the production of television commercials on behalf of Dukakis/Bentsen, as disbursements to Yellin Media and as coordinated party expenditures as the designated agent of the DNC.

If a national party committee intends to designate a state party committee as its agent for making coordinated party expenditures, it should either transfer funds to the state party committee for it to spend or allow the state party committee to use its own funds to make the expenditures. *See* *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981). The DNC designated the Texas Democratic Party as its agent, but paid the vendor directly with its own funds already on deposit with Yellin Media. The Texas Democratic Party's actions and the DNC's actions also appear to be inconsistent with the Act's requirement that all disbursements must be made from a campaign depository. *See* 2 U.S.C. § 432(h). The DNC reported the expenditures as in-kind contributions to the Texas Democratic Party. The Texas Democratic Party reported the payments as both in-kind contributions from the DNC and as coordinated party expenditures as the agent of the DNC. Because the DNC actually made the expenditures from its own account with Yellin Media, it should have reported the expenditures as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d), not as in-kind contributions. Moreover, under these facts, the Texas Democratic Party should not have reported the expenditures as coordinated party expenditures or in-kind contributions from the DNC. Accordingly, it appears that the DNC and the Texas Democratic Party violated 2 U.S.C. § 434(b) by misreporting the payments for the television advertisement in question.

Moreover, the Act requires that a political advertisement must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her authorized committee. 2 U.S.C. § 441d. The television advertisement in question stated that it was paid for by the Texas Democratic

Party. The DNC actually paid for the television advertisement from funds already on deposit with Yellin Media. Moreover, the advertisement did not indicate whether or not it was authorized by any candidate.

In addressing the disclaimer issue in its response, the DNC, in a footnote, argues that it is not readily apparent that the Act requires notice by a political party committee as to whether its activities are or are not "authorized" by its nominees. The DNC supports this assertion with the Commission's Regulation which prohibits party committees from making independent expenditures in support of their nominees for federal office. See 11 C.F.R. §§ 110.7(a)(5) and 110.7(b)(4). The DNC concludes that these sections of the Regulations "irrebutably imply that all such expenditures are authorized."

Section 441d of the Act, however, does not include an exception for party committees. Moreover, the Commission, by regulation, has not made any exception for party committees with regard to the notice and authorization requirements. Therefore, in this matter, the disclaimer should have stated "Paid for by the Democratic National Committee and authorized by the Dukakis/Bentsen Committee, Inc.".

Accordingly, this Office recommends that the Commission reject the request of the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, to take no further action, and proceed to the next stage of the enforcement process. This Office also recommends that the Commission enter into pre-probable cause conciliation with the Texas Democratic

Party and Bob Slagle, as treasurer, prior to a finding of probable cause to believe.

III. DISCUSSION OF CONCILIATION AND PROPOSED CIVIL PENALTY

IV. RECOMMENDATIONS

1. Reject the request of the DNC Services Corporation/ Democratic National Committee and Robert A. Farmer, as treasurer, to take no further action and proceed to the next stage of the enforcement process.

2. Enter into conciliation with the Texas Democratic Party and Bob Slagle, as treasurer, prior to a finding of probable cause to believe.

3. Approve the attached letters (2) and proposed Conciliation Agreement.

Date 7/10/89

Lawrence M. Noble
General Counsel

Attachments
1. Responses
2. Proposed Letters (2) and Conciliation Agreement.

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO:

FROM: MARJORIE W. EMMONS

DATE: JULY 13, 1989

SUBJECT: MUR 2703 - General Counsel's Report
Signed July 10, 1989.

The above-captioned document was circulated to the Commission on

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

Commissioner Aikens	xxx
Commissioner Elliott	
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	xxxx

This matter will be placed on the agenda for July 18, 1989.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of DNC Services Corporation/ Democratic National Committee and Robert A. Farmer, as treasurer Texas Democratic Party and Bob Slagle, as treasurer	)))))))))	MUR 2703

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 18, 1989, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2703:

1. Reject the request of the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, to take no further action and proceed to the next stage of the enforcement process.

2. Enter into conciliation with the Texas Democratic Party and Bob Slagle, as treasurer, prior to a finding of probable cause to believe.

3. Approve the two letters and the proposed conciliation agreement attached to the General Counsel's report dated July 10, 1989.

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

Attest:

7-18-89
Date

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

9 0 0 4 0 3 0 0 5 1 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1989

Joseph A. Rieser, Jr.
Reed Smith Shaw & McClay
Suite 900
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036-4192

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Robert
A. Farmer, as treasurer

Dear Mr. Rieser:

On March 8, 1989, your clients, the DNC Services Corporation/ Democratic National Committee and Robert A. Farmer, as treasurer, were notified that the Federal Election Commission found reason to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d. On March 23, 1989, your clients submitted a response to the Commission's reason to believe findings and requested that the Commission take no further action with regard to them in this matter.

The Commission has considered this request and determined to decline your clients' request to take no further action. The Commission has also determined to move on to the next stage in the enforcement process.

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

Sincerely,

Lawrence M. Noble
General Counsel

90040300517

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1989

Harold D. Hammett
Simon, Anisman, Doby,
Wilson & Skillern
P.O. Box 17047
300 Professional Building
303 West Tenth
Fort Worth, TX 76102

RE: MUR 2703
Texas Democratic Party and
Bob Slagle, as treasurer

Dear Mr. Hammett:

On February 28, 1989, the Federal Election Commission found reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b). At your request, on July 18, 1989, 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 clients agree 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.

Harold D. Hammett
Page 2

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 Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

OGC 3656

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

89 AUG -3 AM 10:29

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

89 AUG -3 PM 4:28

MUR ______________

NAME OF COUNSEL: Christine A. Varney

ADDRESS: Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

TELEPHONE: 202-863-8130

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.

August 1, 1989
Date

Christine A Varney
Signature

RESPONDENT'S NAME: Democratic National Committee

ADDRESS: 430 South Capitol Street, S.E.
Washington, D.C. 20003

HOME PHONE:

BUSINESS PHONE: (202) 863-8130

9 0 4 0 3 0 0 5 2 0

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 NOV 29 AM 11:28

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
DNC Services Corporation/Democratic	)	MUR 2703
National Committee and Robert	)	
A. Farmer, as treasurer	)	

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the DNC Services Corporation/Democratic National Committee based on the assessment of the information presently available.

11/29/89
Date

Lawrence M. Noble
General Counsel

9 0 0 4 0 0 0 5 5 2 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

December 14, 1989

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2703

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed on December 14, 1989. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to respondent

90040300523

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 14, 1989

Christine A. Varney, Esq.
Democratic National Committee
430 South Capital Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Robert
A. Farmer, as treasurer

Dear Ms. Varney:

Based on a complaint filed with the Federal Election Commission on September 26, 1988, and information supplied by your clients, the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, the Commission, on February 28, 1989, found that there was reason to believe your clients, DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d, 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 violations have 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.

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 Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

9004030524

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer	)	MUR 2703
	)	
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On February 28, 1989, the Commission found reason to believe that the DNC Services Corporation/Democratic National Committee (the "DNC") and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d in connection with television advertisements in opposition to George Bush prepared by the Texas Democratic Party, but paid for by the DNC. On March 28, 1989, the DNC submitted a response to the Commission's findings and requested that no further action be taken in this matter. The DNC did not request pre-probable cause conciliation. On July 18, 1989, the Commission rejected the DNC's request to take no further action in this matter.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act") defines contributions and expenditures as anything of value including a gift, loan, or advance made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and 2 U.S.C. § 431(9)(A). Multicandidate political committees may make up to $5,000 in contributions to any candidate for federal office or his or her authorized political committee. 2 U.S.C. § 441a(a)(2)(A). The Act provides that notwithstanding any other provisions of law with respect to limitations on expenditures or contributions, a national committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. 2 U.S.C. § 441a(d)(2).

The Act does not include a similar provision for a state party committee to make similar expenditures on behalf of a Presidential candidate. See 2 U.S.C. § 441a(d). Commission Regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4). The national party committee may spend up to two cents times the national voting age population on behalf of its Presidential candidate in a general election. 2 U.S.C. § 441a(d)(2). All coordinated party expenditures made by the national party committee or its designated state party committees are subject to one spending limit. 11 C.F.R. § 110.7(a). Party committees, however, may not make independent expenditures in connection with the general election campaign of a Presidential candidate. 11 C.F.R. § 110.7(a)(5). For the 1988 general election, the coordinated party expenditure limit for the DNC on behalf of the Dukakis/Bentsen campaign was $8,291,454. The DNC, in its amended 1988 Year End Report, has reported a total of $8,038,522.18 in coordinated party expenditures on behalf of Democratic candidates.

The Act requires that whenever any person, which includes a party committee (see 2 U.S.C. § 431(11)), makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication, if paid for and authorized by the candidate, an authorized political committee of the candidate or agents of the candidate, must clearly state that it was paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). If the communication is paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or the candidate's agents, it shall clearly state that the communication is paid for by such persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). If the communication is not authorized by a candidate, an authorized political committee of the candidate or the candidate's agents, it shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the instant matter, the Texas Democratic Party prepared television advertisements in opposition to George Bush and asked the DNC to delegate part of its 441a(d) authority to the Texas Democratic Party to pay for the cost of the advertisements. In a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC, to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. In a letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d).

In order to save time and get the advertisements out quickly, the Texas Democratic Party asked the DNC to provide financial assistance by making payments for the advertisements to Yellin Media on behalf of the Texas Democratic Party, thus in effect having the DNC pay its bill with Yellin Media. The DNC responded by permitting Yellin Media to use the DNC's funds already on deposit to pay for the advertisements of the Texas Democratic Party. In a letter from Bob Slagle to Harriett Yellin, dated September 20, 1988, the Texas Democratic Party authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of purchasing television advertisements for the benefit of the Democratic Ticket in Texas. The letter further noted that the DNC "will transfer to us [the Texas Democratic Party], through you [Yellin Media] as our agent, $125,000 from its federal account...." In a second letter, dated September 26, 1988, Bob Slagle authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of paying production costs for television advertising. The letter also indicated that the Texas Democratic Party anticipated that the DNC would transfer an additional $8,000 to the Texas Democratic Party through Yellin Media.

The television advertisements in question ran on fifty-two (52) occasions from September 21 through September 25, 1988 on six (6) Texas television stations. The advertisements indicated that they were paid for by the Texas Democratic Party and stated, in part:

> [W]hen the oil business [of Texas] collapsed for the lack of a national energy policy, where was George?...Now George Bush is calling on Texas to help. But where was George when we needed him?

In its 1988 October Monthly Report, the DNC reported a $125,000 disbursement on September 20, 1988 and a $8,000 disbursement on September 23, 1988 to Yellin Media as in-kind contributions to the Texas Democratic Party for media expenditures. The Texas Democratic Party, in its 1988 October Quarterly Report, noted a $125,000 in-kind contribution on September 20, 1988 and a $8,000 in-kind contribution on September 23, 1988 from the DNC for the purchase of air time and television production. Moreover, on its F Schedule, the Texas Democratic Party reported the $125,000 and $8,000 as in-kind contributions received from the DNC for the purchase of air time and the production of television commercials on behalf of Dukakis/Bentsen, as disbursements to Yellin Media and as coordinated party expenditures as the designated agent of the DNC.

If a national party committee intends to designate a state party committee as its agent for making coordinated party expenditures, the national party should either transfer funds to the state party committee for it to spend or allow the state party committee to use its own funds to make the expenditures. <u>See</u> <u>FEC v. Democratic Senatorial Campaign Committee</u>, 454 U.S. 27

(1981). The DNC designated the Texas Democratic Party as its agent, but paid the vendor directly with its own funds already on deposit with Yellin Media. The Texas Democratic Party's actions and the DNC's actions also appear to be inconsistent with the Act's requirement that all disbursements must be made from a campaign depository. See 2 U.S.C. § 432(h). The DNC reported the expenditures as in-kind contributions to the Texas Democratic Party. The Texas Democratic Party reported the payments as both in-kind contributions from the DNC and as coordinated party expenditures as the agent of the DNC. Because the DNC actually made the expenditures from its own account with Yellin Media, it should have reported the expenditures as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d), and not as in-kind contributions. Accordingly, there is probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 434(b) by misreporting the payments for the television advertisements in question.

Moreover, the Act requires that a political advertisement must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her authorized committee. 2 U.S.C. § 441d. The television advertisements in question stated that they were paid for by the Texas Democratic Party. The DNC actually paid for the television advertisements from funds already on deposit with Yellin Media. Moreover, the advertisements did not indicate whether or not they were authorized by any candidate.

In addressing the disclaimer issue, the DNC argues that it is not readily apparent that the Act requires notice by a political party committee as to whether its activities are or are not "authorized" by its nominees. The DNC supports this assertion with the Commission's Regulation which prohibits party committees from making independent expenditures in support of their nominees for federal office. <u>See</u> 11 C.F.R. §§ 110.7(a)(5) and 110.7(b)(4). The DNC concludes that these sections of the Regulations "irrebutably imply that all such expenditures are authorized."

Section 441d of the Act, however, does not include an exception for party committees. Moreover, the Commission, by regulation, has not made any exception for party committees with regard to the notice and authorization requirements. Therefore, in this matter, the disclaimer should have stated "Paid for by the Democratic National Committee and authorized by the Dukakis/Bentsen Committee, Inc."

Based on the foregoing analysis, there is probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441d by failing to include the appropriate disclaimer on the television advertisements in question.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d.

12/13/89
Date

Lawrence M. Noble
General Counsel

90040300532

OGC 5027

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JAN -3 AM 9:44

Democratic National Committee

December 29, 1989

90 JAN -3 PM 2:51

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Ms. Frania Monarski, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2703

Dear Ms. Monarski:

On behalf of the DNC Services Corporation/Democratic National Committee and Robert A. Farmer as Treasurer (collectively the "DNC"), I am writing to request an additional twenty days in which to respond to the Federal Election Commission's ("FEC") Office of General Counsel's probable cause determination in the above referenced matter.

By letter dated December 14, 1989 and received by the DNC's General Counsel on December 15, 1989, the Commission advised the DNC that its Office of General Counsel is prepared to recommend to the Commission that it find probable cause to believe that the DNC violated 2 U.S.C. § 434(b) by allegedly misreporting payments for television advertisements prepared by the Texas Democratic Party and violated 2 U.S.C. § 441d by allegedly failing to provide the appropriate disclaimer for the advertisements.

I hereby request that the DNC be granted additional time through and including February 7, 1990 in which to respond to MUR 2703. In light of the fact that the original response period falls during the holiday season when persons who will be involved in preparing the response are unavailable, the additional time is required to fully respond to the Office of General Counsel's brief in support of its recommendation.

9 1 0 4 0 3 0 5 3 3

Please call me at 863-8166 if you have any questions concerning this request.

Sincerely,

Hartina Flournoy
Senior Counsel

cc: Christine Varney, Esquire
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 5, 1990

Christine Varney, Esq.
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Robert
A. Farmer, as treasurer

Dear Ms. Varney:

This is in response to your letter dated December 29, 1989, which we received on January 3, 1990, requesting an extension until February 7, 1990 to respond to MUR 2703. 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 February 7, 1990.

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

Sincerely,

Lawrence M. Noble
General Counsel

90040050535

OGC 5348

Democratic National Committee

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 FEB -7 PM 3:59

February 7, 1990

Ms. Frania Monarski
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Monarski:

Under this cover, I am submitting, on behalf of the Democratic National Committee, 3 copies of its response to the Office of General Counsel's Brief in MUR 2703.

Sincerely,

William Cross

William Cross

9 1 0 4 0 3 0 0 5 3 6

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000

Democratic National Committee

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

Attention: Office of General Counsel

Re: <u>MUR 2703</u>

Dear Sir or Madam:

On behalf of DNC Services Corporation/Democratic National Committee (the "DNC"), I write to respond to <u>MUR 2703</u>.

1. OVERVIEW OF <u>MUR 2703</u>

<u>MUR 2703</u> concerns certain television advertisements aired by the Texas Democratic Party in September, 1988 in connection with the general election campaign. These advertisements pertained to the general election contest between the Democratic Party Presidential Nominee, Governor Michael Dukakis, and the Republican Party Presidential Nominee, George Bush.

The Commission in <u>MUR 2703</u>, has found reason to believe that the DNC violated sections 434(b) and 441d of the Federal Election Campaign Act of 1971, as amended (the "Act"), with respect to these ads. The Office of General Counsel ("OGC), as argued in "General Counsel's Brief", alleges that the advertisements were paid for by the DNC and not by the state party. Accordingly, the OGC argues that the disclosure statement should have said "Paid for by the Democratic National Committee".

This brief is filed in response to the "General Counsel's Brief" to support Respondent's position that the DNC has committed no violation of the Act.

II. FACTUAL BACKGROUND

The Texas Democratic Party prepared television advertisements relating to the general election campaign of the Dukakis/Bentsen ticket. In order to air these ads in compliance with the Act, the Texas Democratic Party requested that sufficient 441a(d) authority be delegated to it by the DNC. The ads that are the subject of <u>MUR 2703</u> were prepared under the sole direction of the Texas Democratic Party. Once granted the necessary 441a(d) authority, the Texas Democratic Party exercised sole control over the airing of these ads.

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000

In a letter dated September 20, 1988, from Paul Kirk, Chairman of the DNC, to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign, (exhibit A, attached). In a similar letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make an additional $8,000 in coordinated expenditures for a total of $133,000, (exhibit B, attached).

In a letter dated September 20, 1988, from Robert Slagle to Harriet Yellin, President of Yellin Media, Inc. ("Yellin"), the Texas Democratic Party authorized Yellin to "accept and expend funds as our agent for the purpose of purchasing, on our behalf, television advertising for the benefit of the Democratic ticket in our state". This letter continues, "It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $125,000 ..." (exhibit C, attached). A similar letter, of September 26, 1988, from Robert Slagle to Harriet Yellin authorizes Yellin to accept, as the Texas Democratic Party's agent, an additional $8,000 transfer from the DNC to the Texas Democratic Party (exhibit D, attached).

The Texas Democratic Party, after receiving the DNC's 441a(d) authority, asked the DNC to transfer to it, sufficient funds to pay for the production and airing of the advertisements. The DNC agreed to transfer these funds. To expedite the transfer of the funds, the Texas Democratic Party asked the DNC to transfer the funds directly to its agent, Yellin Media, Inc. The DNC agreed to this request. The DNC had funds on account with Yellin. These funds were to be used by Yellin when purchasing time, on behalf of the DNC, for television and radio ads. In order to comply with its agreement with the Texas Democratic Party, the DNC authorized Yellin, an agent of the Texas Democratic Party, to assume control over $125,000 (and subsequently an additional $8,000) of its funds on account and expend them as directed by the Texas Democratic Party.

III. ANALYSIS

National Party Committees are permitted to spend up to two cents times the national voting age population on behalf of their Presidential nominee in a general election. 2 U.S.C. 441a(d)(2). For the 1988 general election, the coordinated party expenditure limit for the DNC on behalf of the Dukakis/Bentsen campaign was $8,291,454. The DNC, according to its most recent F.E.C. report, expended, or delegated, a total of $8,127,803.24 in coordinated party expenditures on behalf of the Dukakis/Bentsen ticket. This amount includes the $133,000 delegated to the Texas Democratic

Party for the ads at issue here.

Pursuant to 11 C.F.R. 110.7(a)(4) a national party committee may make coordinated expenditures through a designated agent, including state and subordinate party committees.

Given the above facts and law it is difficult to see how the DNC violated any law in the transaction here in question. The Act specifically allows the DNC to expend a set amount of money on behalf of its nominee during the general election campaign. It has not been suggested that the DNC exceeded this amount. Applicable F.E.C. regulations specifically allow the DNC to delegate its authority to make these expenditures to state and local party committees. It is not contested that the DNC properly made the Texas Democratic Party its agent for the purpose of making the expenditures here in question. It is only through a torturous and unsupported view of the state of the law that the OGC is able to arrive at the conclusion that the DNC violated the law in this transaction.

OGC argues that "If a national party committee intends to designate a state party committee as its agent for making coordinated party expenditures, the national party should either transfer funds to the state party committee for it to spend or allow the state party committee to use its own funds to make the expenditures". (OGC Brief, pg. 5). This requirement is not found anywhere in the Act or in the Commissions regulations. In fact, the only authority cited by OGC for this position is FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981). The OGC does not offer any particular jump cite or quotation from this case in support of its position. This is not surprising as the case cited offers absolutely no authority for OGC's position. No where in the cited case does the Court set out any requirements regarding the genesis of funds used by a state party committee to make coordinated expenditures. Specifically, the Court does not even address the ultimate issue addressed in MUR 2703 of whether a national party committee may pay for an authorized state party committee's coordinated expenditure through an in kind contribution.

If relevant at all to MUR 2703, FEC v. Democratic Senatorial Campaign Committee strengthens Respondents position. On page 42 of the above cited opinion, the Court supports its upholding of the agency agreement at issue by noting that nothing in the Act, regulations or legislative purpose prohibits such an arrangement. In the instant case, Respondents position is even stronger as the Act and regulations specifically permit the extant agency agreement.

OGC's position that the funds must be transferred to the state committee and cannot be paid directly to the vendor as an in kind contribution is not supported anywhere in the Act, regulations or case law. If a national party committee grants 441a(d) authority to a state party and then pays the vendor for the expenditures and reports the payment as an in kind contribution to the state party committee, as Respondent did, then clearly the national party committee has complied with the law.

OGC's unsupported position that the national committee must first transfer the money to the state party does nothing to further the purpose of the Act or regulations. The purpose of the law in this area is to ensure full disclosure of the committee paying for the ads. If the DNC reports that it paid for the ads as an in kind contribution to the Texas State Party, clearly as much disclosure is made as would be if the DNC instead transferred the funds to the state party who in turn immediately transferred the funds to the vendor. In both cases the ads are permitted only through section 441 and are paid for with funds raised by the national committee. To make a distinction between the two scenarios is to attempt to create a difference where none exists.

It would in fact be contrary to the spirit of the Act to require that these ads be considered "paid for" by the DNC. It is a cardinal principle under the Act that expenditures made on behalf of a political committee constitute contributions to that political committee. This is true if one organization pays an obligation of a political committee. See, e.g., A.O. 1985-29, 1 Fed. Elect. Camp. Fin. Guide (CCH) 5829 at 11,209 & n.5 (November 4, 1985). In fact, in the context of candidate committees, the Act itself requires that an expenditure made in cooperation, consultation or concert with, or at the suggestion of, the candidate's agents must be reported as an in kind contribution. Indeed, if that were not the rule, the limitations and prohibitions of the Act could be easily avoided or evaded. Consequently, the Commission has enforced that principle with great regularity and strictness. See, e.g., A.O. 1983-23, 1 Fed. Elect. Camp. Fin. Guide (CCH) 5728 (September 26, 1983).

As is apparent from the face of the ads here in question, they were designed by Texans, with Texas in mind. The DNC had nothing to do with their preparation or with the decision whether, when or where to air them. Indeed, its only knowledge of the content of the ads comes from the transcription thereof attached to the notice of MUR 2703 sent to it by the Commission. Given these circumstances -- the derivation of the ads, the Texas Party's request for help, the DNC's passive role vis-a-vis the Texas party in connection therewith, and its lack of control over whether, when and where to air them -- the payments by the DNC to Yellin can only be seen as contributions in-kind by the DNC to the Texas Democratic Party. Indeed, if the Commission were to hold that the ads in question were "paid for" by the DNC, it not only would treat the DNC unjustly but also would substantially eviscerate the contribution prohibitions and limitations, particularly with respect to independent expenditures, for such a conclusion could easily be exploited by those who wish to provide assistance to various political committees but not have such assistance counted as contributions thereto.

Assuming, arguendo, that the OGC is correct in its assertion that if a national party committee intends to designate a state party committee as its agent for making coordinated party expenditures, the national party should either transfer funds to the state party for it to spend or allow the state party committee to use its own funds to make the expenditures, the DNC has still committed no violation. OGC has overlooked the fact that by a letter of September 20, 1988, Robert Slagle, Chairman of the Texas Democratic Party, authorized Harriet Yellin "to accept and expend funds as our agent for the purpose of purchasing, on our behalf, television advertising for the benefit of the Democratic ticket in our state". This letter indisputably made Yellin an agent of the Texas party for purposes of this transaction. Accordingly, once the DNC authorized Yellin to assume control over $125,000 (and ultimately $133,000) of DNC money on account with Yellin and use this money as directed by the Texas party, the funds were effectively transferred to the Texas party through their agent Yellin. OGC has stated in their brief that their view of the relevant law is that the national party must transfer the funds to the state party before the transaction is made. Even to this highly questionable reading of the law, to which Respondent vehemently dissents, the DNC has complied -- the DNC transferred the funds to Yellin, a duly authorized agent of the Texas party, prior to the transaction. It is a well established principle of agency law that, "a person may do through an agent whatever he is empowered to do in his own proper person". First National Bank v. Southland Production Co., 112 P2d. 1087, 1092 (Ok. 1941). The Commission allows, in fact demands that, a state party expending a portion of a national committee's 441 authority do so with its own money or with funds transferred to it from the national committee. Thus, if the Texas state party was empowered to receive funds from the DNC to expend on the relevant television ads, then its agent, Yellin, was equally authorized to do so on its behalf. Thus, even under the OGC's interpretation of the relevant law, the DNC has committed no violation of federal election law as it properly transferred the funds to the Texas State Party, and properly reported the transfer to the Commission.

There is equally no merit to the Commission's allegation that the DNC violated the Act by not disclosing that the ads were paid for by the DNC and authorized by the candidate. As discussed above, the ads were paid for by the Texas state party with funds transferred to it from the DNC. Since the ads were not paid for, nor under the control of, the DNC, the DNC can not be held liable for an alleged failure of the ads to state that they were authorized by the Dukakis/Bentsen Committee, Inc. As Respondent has argued in its earlier submission, it is not clear that the Act requires such an authorization statement, however, even if such notice is required it can not be required of a committee that neither produces, controls nor pays for the ads.

For all of these reasons MUR 2703 should be dismissed. The DNC has complied with both the traditional and the OGC's interpretation of the Act. The DNC's transfer of funds to Yellin was the equivalent, under agency law, of transferring the funds directly to the Texas Democratic Party. Since the DNC authorized the Texas Democratic Party to make 441 expenditures on its behalf, and transferred the necessary funds to the state party's agent before the expenditures were made, there has been no violation of the Act or regulations.

Respectfully Submitted:

William P Cross

William P. Cross
DNC Staff Counsel

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 20, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. Slagle:

This letter sets forth in full the agreement between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, as follows:

1. The DNC hereby designates the Texas Democratic Party as agent for the DNC for the exclusive purpose of making expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States, up to the amount of one-hundred-twenty-five-thousand dollars ($125,000.00). The Texas Democratic Party hereby accepts such agency.

2. In exercising its authority pursuant to this Agreement, the Texas Democratic Party will comply with the limitations and reporting and other requirements of the Federal Election Campaign Act of 1971, as amended ("the Act") and the regulations promulgated thereunder.

3. The Texas Democratic Party will report to the DNC all such information as the DNC may request for the purpose of DNC's compliance with the requirements of the Act.

4. Notwithstanding the foregoing, the DNC may, by written notice to the Texas Democratic Party, reassume portions of the authority delegated to the Texas Democratic Party under this Agreement, to the extent that the Texas Democratic Party shall not then have made or committed to make such expenditures itself.

EXHIBIT 1

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000

90040000543

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: ____________________
Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: ____________________
Robert Slagle, Chairman

Democratic National Committee

Paul G. Kirk, Jr.
Chairman

September 23, 1988

Hon. Robert Slagle, Chairman
Texas Democratic Party
815 Brazos, Suite 200
Austin, Texas 78701

Dear Mr. Slagle:

Reference is made to that certain letter agreement dated September 20, 1988, between DNC Services Corporation/Democratic National Committee ("DNC") and the Texas Democratic Party (the "Agreement"), concerning expenditures pursuant to 2 U.S.C. §441a(d) in connection with the general election campaign of Michael S. Dukakis for President of the United States and Lloyd Bentsen for Vice President of the United States.

That Agreement is modified as follows: In paragraph 1, the amount of "one-hundred-twenty-five thousand dollars ($125,000)" shall be amended to read "one-hundred-thirty-three-thousand ($133,000.00)."

All other terms and conditions of the Agreement shall remain in full force and effect.

Please confirm your agreement with the foregoing by signing and returning two copies of this letter.

Sincerely yours,

DNC SERVICES CORPORATION

By: Paul G. Kirk, Jr.
-Paul G. Kirk, Jr., Chairman

AGREED:

TEXAS DEMOCRATIC PARTY

By: Bob Slagle
Robert Slagle, Chairman

EXHIBIT 2

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000

September 20, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of purchasing, on our behalf, television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $125,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Robert Slagle
Chairman
Texas Democratic Party

EXHIBIT 3

93040305546

Texas Democratic Party

September 26, 1988

Ms. Harriett Yellin
Harriett Yellin, Inc.
1205 Statler Office Building
Boston, Massachusetts 02116

Dear Ms. Yellin:

This letter authorizes you to accept and expend funds as our agent for the purpose of paying production costs for television advertising for the benefit of the Democratic ticket in our state.

It is anticipated that the Democratic National Committee (the "DNC") will transfer to us, through you as our agent, $8,000 from its federal account, which contains only funds raised in accordance with the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act").

We understand that under the Act we will be required to report the receipt and expenditure of these federal funds.

Sincerely,

Bob Slagle

Bob Slagle
Chairman
Texas Democratic Party

EXHIBIT 4

815 Brazos, Suite 200/Austin, Texas 78701/(512) 478-8746

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Texas Democratic Party and	)	MUR 2703
and Bob Slagle, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Bob Slagle, the treasurer of the Texas Democratic Party.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Texas Democratic Party and Bob Slagle, as treasurer.

2. Close the file as to this respondent.

3. Approve the attached letter.

Date 2/1/90

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement
2. Photocopy of civil penalty check
3. Letter to Respondent

Staff Assigned: Frania Monarski

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2703
Texas Democratic Party and)
and Bob Slagle, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 6, 1990, the Commission decided by a vote of 4-0 to take the following actions in MUR 2703:

1. Accept the conciliation agreement with the Texas Democratic Party and Bob Slagle, as treasurer, as recommended in the General Counsel's report dated February 1, 1990.

2. Close the file as to this respondent.

3. Approve the letter, as recommended in General Counsel's Report dated February 1, 1990.

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

Attest:

2/6/90 — Hilda Arnold

Date

for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thursday, Feb. 1, 1990 4:34 p.m.
Circulated to the Commission: Friday, Feb. 2, 1990 12:00 p.m.
Deadline for vote: Tuesday, Feb. 6, 1990 4:00 p.m.

0009512

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 8, 1990

Harold D. Hammett, Esq.
Simon, Anisman, Doby, Wilson & Skillern
P.O. Box 17047
300 Professional Building
303 West Tenth
Fort Worth, TX 76102-7071

RE: MUR 2703
Texas Democratic Party and
Bob Slagle, as treasurer

Dear Mr. Hammett:

On February 6 , 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your clients, the Texas Democratic Party and Bob Slagle, as treasurer. This matter will become a part of the public record within 30 days after it has been closed with respect to all other respondents involved. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2703
Texas Democratic Party and)
Bob Slagle, as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Republican Party of Texas and Fred Meyer, as Chairman. The Federal Election Commission ("Commission") found reason to believe that the Texas Democratic Party and Bob Slagle, as treasurer, ("Respondents") violated 2 U.S.C. § 434(b).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Texas Democratic Party is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Bob Slagle is the treasurer of the Texas Democratic Party.

3. Pursuant to 2 U.S.C. § 441a(d)(2), a national party

committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. The Act does not include a similar provision for a state party committee to make these expenditures on behalf of a Presidential candidate. Commission Regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. If a national party intends to designate a state party committee as its agent for making coordinated party expenditures, the Commission's interpretation of its Regulations requires that the national party should either transfer funds to the state party committee's own bank account for it to spend or allow the state party committee to use its own funds to make the expenditures. <u>See</u> <u>FEC v. Democratic Senatorial Campaign Committee</u>, 454 U.S. 27 (1981).

4. Pursuant to 2 U.S.C. § 434(b), a political committee must report all receipts and disbursements made during the reporting period.

5. Respondents prepared television advertisements in opposition to George Bush and asked the Democratic National Committee ("DNC") to delegate part of its coordinated party expenditure authority to Respondents to pay for the cost of the advertisements. Although the DNC designated Respondents as its agent, the DNC allowed the vendor to use DNC funds already on deposit with the vendor as payment for the television advertisements. Respondents reported these payments by the DNC

as in-kind contributions from the DNC and as coordinated party expenditures. Because the DNC funds which paid for the television advertisements were not transferred to Respondents, Respondents should not have reported the payments as in-kind contributions and as coordinated party expenditures.

V. Respondents misreported expenditures for television advertisements in opposition to George Bush as in-kind contributions and coordinated party expenditures in violation of 2 U.S.C. § 434(b), interpreted as described in Section IV, paragraph 3 above. Respondents contend that this was not a knowing and willful violation.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of fifteen hundred dollars ($1,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

Date 2/7/90

FOR THE RESPONDENTS:

(Name)
(Position)

Date 1/24/90

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 APR 11 AM 9:31

SENSITIVE

MAY 1 1990

EXECUTIVE SESSION

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/Democratic	)	MUR 2703
National Committee and Robert	)	
A. Farmer, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 28, 1989, the Commission found reason to believe that the DNC Services Corporation/Democratic National Committee (the "DNC") and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d in connection with television advertisements in opposition to George Bush prepared by the Texas Democratic Party but paid for by the DNC. On March 28, 1989, the DNC submitted a response to the Commission's findings and requested that no further action be taken in this matter. The DNC did not request pre-probable cause conciliation.[1] On July 18, 1989, the Commission rejected the DNC's request to take no further action in this matter. On December 14, 1989, this Office sent a copy of its brief to the DNC. On February 7, 1990, the DNC submitted a response brief to the Commission.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act") defines contributions and expenditures as anything of value including a gift, loan, or advance made by any person for

1. The other Respondent involved in this matter, the Texas Democratic Party, requested pre-probable cause conciliation. Texas Democratic Party signed a conciliation agreement with an admission of a violation of 2 U.S.C. § 434(b) and submitted a check for $1,500, the amount of the civil penalty, which was accepted by the Commission on February 6, 1990.

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the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and 2 U.S.C. § 431(9)(A). Multicandidate political committees may make up to $5,000 in contributions to any candidate for federal office or his or her authorized political committee. 2 U.S.C. § 441a(a)(2)(A). The Act provides that notwithstanding any other provisions of law with respect to limitations on expenditures or contributions, a national committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. 2 U.S.C. § 441a(d)(2).

The Act does not include a similar provision for a state party committee to make similar expenditures on behalf of a Presidential candidate. See 2 U.S.C. § 441a(d). Commission Regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4). The national party committee may spend up to two cents times the national voting age population on behalf of its Presidential candidate in a general election. 2 U.S.C. § 441a(d)(2). All coordinated party expenditures made by the national party committee or its designated state party committees are subject to one spending limit. 11 C.F.R. § 110.7(a). Party committees, however, may not make independent expenditures in connection with the general election campaign of a Presidential candidate. 11 C.F.R. § 110.7(a)(5). For the 1988 general election, the coordinated party expenditure limit for the DNC on behalf of the

Dukakis/Bentsen campaign was $8,291,454. The DNC, in its amended 1988 Year End Report, has reported a total of $8,038,522.18 in coordinated party expenditures on behalf of Democratic candidates.

The Act requires that whenever any person, which includes a party committee (see 2 U.S.C. § 431(11)), makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication, if paid for and authorized by the candidate, an authorized political committee of the candidate or agents of the candidate, must clearly state that it was paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). If the communication is paid for by other persons, but authorized by a candidate, an authorized political committee of a candidate, or the candidate's agents, it shall clearly state that the communication is paid for by such persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). If the communication is not authorized by a candidate, an authorized political committee of the candidate or the candidate's agents, it shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the instant matter, the Texas Democratic Party prepared television advertisements in opposition to George Bush and asked the DNC to delegate part of its 441a(d) authority to the Texas

Democratic Party to pay for the cost of the advertisements. In a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC, to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. In a letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d).

In order to save time and get the advertisements out quickly, the Texas Democratic Party asked the DNC to provide financial assistance by making payments for the advertisements to Yellin Media on behalf of the Texas Democratic Party, thus in effect having the DNC pay its bill with Yellin Media. The DNC responded by permitting Yellin Media to use the DNC's funds already on deposit to pay for the advertisements of the Texas Democratic Party. In a letter from Bob Slagle to Harriett Yellin, dated September 20, 1988, the Texas Democratic Party authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of purchasing television advertisements for the benefit of the Democratic Ticket in Texas. The letter further noted that the DNC "will transfer to us [the Texas Democratic Party], through you [Yellin Media] as our agent, $125,000 from its federal account...." In a second letter, dated September 26, 1988, Bob Slagle authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of paying production costs for television advertising. The letter also indicated that the Texas Democratic Party anticipated that the DNC would transfer an additional $8,000 to the Texas Democratic Party through Yellin Media.

In its 1988 October Monthly Report, the DNC reported a $125,000 disbursement on September 20, 1988 and a $8,000 disbursement on September 23, 1988 to Yellin Media as in-kind contributions to the Texas Democratic Party for media expenditures. The Texas Democratic Party, in its 1988 October Quarterly Report, noted a $125,000 in-kind contribution on September 20, 1988 and a $8,000 in-kind contribution on September 23, 1988 from the DNC for the purchase of air time and television production. Moreover, on its Schedule F, the Texas Democratic Party reported the $125,000 and $8,000 as in-kind contributions received from the DNC for the purchase of air time and the production of television commercials on behalf of Dukakis/Bentsen, as disbursements to Yellin Media and as coordinated party expenditures as the designated agent of the DNC.

If a national party committee intends to designate a state party committee as its agent for making coordinated party expenditures, the national party may either transfer funds to the state party committee for it to spend or allow the state party committee to use its own funds to make the expenditures. *See FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981). The DNC designated the Texas Democratic Party as its agent, but allowed the vendor to be paid directly with the DNC's own funds already on deposit with Yellin Media. The Texas Democratic Party's actions and the DNC's actions with regard to the funds on deposit with Yellin Media also appear to be inconsistent with the Act's requirement that all disbursements must be made from a campaign depository. See 2 U.S.C. § 432(h). The DNC reported the expenditures as in-kind contributions to the Texas Democratic Party. The Texas Democratic Party reported the payments as both in-kind contributions from the DNC and as coordinated party expenditures as the agent of the DNC. Because the DNC actually made the expenditures from its own account with Yellin Media, it should have reported the expenditures as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d), and not as in-kind contributions.

In its response brief, the DNC argues that the Commission's position that funds must be transferred to the state party committee and cannot be paid directly to the vendor as in-kind contributions is not explicitly supported anywhere in the Act, Regulations or case law. The DNC states that the purpose of the law in this area is to ensure full disclosure by the committee paying for the advertisements. The DNC contends that requiring the national committee to first transfer the money to the state party committee does nothing to further this purpose of the Act or Regulations. Moreover, the DNC argues that the reporting by the DNC of the payments for these advertisements as in-kind contributions to the Texas Democratic Party provides as much disclosure as requiring the DNC to transfer the funds to the Texas Democratic Party who in turn immediately transferred the funds to the vendor. The DNC asserts that there is no distinction between the two instances described above because in both cases, the advertisements were permitted only by 2 U.S.C. § 441a(d) and were paid for with funds from the national party. Furthermore, the DNC contends that it would be contrary to the spirit of the Act to require these advertisements to be paid for by the DNC because pursuant to the Act, expenditures made on behalf of a committee constitute contributions to that committee.

In the alternative, the DNC argues that if the Commission is correct in requiring the national committee to either transfer funds to the state party committee or allow the state party committee to use its own funds to pay for the advertisements in question, the DNC still has not violated the Act because in a letter dated September 20, 1988, Bob Slagle, the Chairman of the Texas Democratic Party authorized Harriet Yellin to accept and expend funds as the Texas Democratic Party's agent for the purpose of purchasing the advertisements in question. The DNC maintains that once the DNC authorized Yellin Media to assume control over $133,000 of the DNC funds on account with Yellin Media and use the funds as directed by the Texas Democratic Party, the funds were effectively transferred to the Texas Democratic Party through its agent, Yellin Media. The DNC further argues that if the Texas Democratic Party was empowered to receive funds from the DNC to pay for the advertisements in question, then its agent, Yellin Media, was equally authorized to do so on its behalf.

The Commission's interpretation of the Act and Regulations require that if a national party committee intends to designate a state party committee at its agent for making coordinated party expenditures, the national party may either transfer funds to the state party committee for it to spend or allow the state party committee to use its own funds to make the expenditures. The Commission has previously sanctioned these two methods but has not previously approved of the method employed by the DNC. See Advisory Opinion 1976-108. In the present matter, the DNC did not use either of the two previously approved methods for the purpose of making the expenditures in question. The DNC merely paid the Texas Democratic Party's bill with Yellin Media with its funds already on deposit with Yellin Media.[2] Accordingly, this Office recommends that the Commission find probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 434(b) by misreporting the payments for the television advertisements in question.

Moreover, the Act requires that a political advertisement must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her authorized committee. 2 U.S.C. § 441d. The television advertisements in

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2. This Office notes that although the DNC submitted copies of two letters from the DNC to the Texas Democratic Party designating the Texas Democratic Party as its agent for the purpose of making up to $133,000 in coordinated party expenditures and a letter from the Texas Democratic Party to Yellin Media authorizing Yellin Media to act as the Texas Democratic Party's agent, the DNC did not provide copies of any correspondence between the DNC and Yellin Media with regard to this transaction.

question stated that they were paid for by the Texas Democratic Party. As discussed above, however, the DNC actually paid for the television advertisements from funds already on deposit with Yellin Media. Moreover, the advertisements did not indicate whether or not they were authorized by any candidate.

In addressing the disclaimer issue, the DNC argues that the advertisements in question were paid for by the Texas Democratic Party with funds transferred from the DNC. Accordingly, the DNC asserts that since the DNC did not pay for or control the advertisements in question, it cannot be held liable for the failure of the advertisements to state whether or not they were authorized by the Dukakis/Bentsen Committee, Inc. This Office notes that it is irrelevant whether the DNC controlled or even knew of the contents of these advertisements because the disclaimer requirement focuses on who paid for the advertisements and who authorized them. Because of the complicated method employed by the DNC to pay for the advertisements, the advertisements were presented to the public as paid for the Texas Democratic Party when in fact they were paid for with DNC funds on deposit with Yellin Media.

The DNC further argues that it is not readily apparent that the Act requires notice by a political party committee as to whether its activities are or are not "authorized" by its nominees. The DNC supports this assertion with the Commission's Regulation which prohibits party committees from making independent expenditures in support of their nominees for federal office. See 11 C.F.R. §§ 110.7(a)(5) and 110.7(b)(4). The DNC concludes that these sections of the Regulations "irrebutably imply that all such expenditures are authorized."

Section 441d of the Act, however, does not include an exception for party committees. Moreover, the Commission, by regulation, has not made any exception for party committees with regard to the notice and authorization requirements. The DNC paid for the advertisements in question with its own funds on deposit with Yellin Media. Therefore, the disclaimer should have stated "Paid for by the Democratic National Committee and authorized by the Dukakis/Bentsen Committee, Inc."

Based on the foregoing analysis, there is probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441d by failing to include the appropriate disclaimer on the television advertisements in question.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d.

2. Approve the attached conciliation agreement and letter.

4/11/90
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Conciliation Agreement
2. Letter

Staff assigned: Frania Monarski

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2703
DNC Services Corporation/Democratic	)	
National Committee and Robert	)	
A. Farmer, as treasurer	)	

<u>CERTIFICATION</u>

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on April 24, 1990, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2703:

1. Find probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d.

2. Approve the conciliation agreement and letter attached to the General Counsel's report dated April 11, 1990.

Commissiones Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald was not present.

Attest:

4-26-90
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 30, 1990

Christine Varney, Esq.
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Robert
A. Farmer, as treasurer

Dear Ms. Varney:

On April 24, 1990, the Federal Election Commission found that there is probable cause to believe your clients, the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended, in connection with television advertisements in support of the Democratic nominees for President and Vice President in the 1988 election.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in the United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in the settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

Christine Varney, Esq.
Page 2

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

RECEIVED
FEDERAL ELECTION COMMISSION

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/Democratic	)	MUR 2703
National Committee and Robert	)	
A. Farmer, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Christine A. Varney, General Counsel of the Democratic National Committee.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer.

2. Close the file.

3. Approve the appropriate letters.

8/21/90
Date

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement

Staff Assigned: Frania Monarski

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer.	)	MUR 2703

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 24, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2703:

1. Accept the conciliation agreement with the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, as recommended in the General Counsel's Report dated August 21, 1990.

2. Close the file.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 21, 1990.

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

Attest:

8-24-90
Date

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

Received in the Secretariat:	Wed., August 22, 1990	11:42 a.m.
Circulated to the Commisison:	Wed., August 22, 1990	4:00 p.m.
Deadline for vote:	Fri., August 24, 1990	4:00 p.m.

dr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Fred Meyer, Chairman
Republican Party of Texas
211 E. 7th Street
Suite 620
Austin, TX 73701

RE: MUR 2703

Dear Mr. Meyer:

This is in reference to the complaint you filed with the Federal Election Commission on September 26, 1988, concerning television advertisements by the Texas Democratic Party and the Democratic National Committee promoting the Democratic Presidential Ticket.

After conducting an investigation in this matter, the Commission found that there was reason to believe the Texas Democratic Party and Bob Slagle, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended. On February 6, 1990, a conciliation agreement signed by the Texas Democratic Party was accepted by the Commission.

On April 24, 1990, the Commission found probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. §§ 434(b) and 441d. On August 24, 1990, a conciliation agreement signed by the DNC Services Corporation/Democratic National Committee was accepted by the Commission. Accordingly, the Commission closed the file in this matter on August 24, 1990. Copies of these agreements are enclosed for your information.

Fred Meyer, Chairman
Page 2

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosures
Conciliation Agreements

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1990

Harold D. Hammett, Esq.
Simon, Anisman, Doby, Wilson & Skillern
P.O. Box 17047
300 Professional Building
303 West Tenth
Fort Worth, TX 76102-7071

RE: MUR 2703
Texas Democratic Party and
Bob Slagle, as treasurer

Dear Mr. Hammett:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

90040300576

CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1990

Christine A. Varney, Esq.
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 2703
DNC Services Corporation/
Democratic National
Committee and Robert
A. Farmer, as treasurer

Dear Ms. Varney:

On August 24, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 434(b) and 441, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your clients, the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Christine A. Varney, Esq.
Page 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

OGC 7409

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer	)	MUR 2703

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Republican Party of Texas and Fred Meyer, as Chairman. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that the DNC Services Corporation/Democratic National Committee and Robert A. Farmer, as treasurer ("Respondents") violated 2 U.S.C. §§ 434(b) and 441d.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in his matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The DNC Services Corporation/Democratic National Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Robert A. Farmer is the treasurer of the DNC Services Corporation/Democratic National Committee.

3. Pursuant to 2 U.S.C. § 441a(d)(2), a national party committee may make certain limited "coordinated party" expenditures in connection with the general election campaign of any candidate for President who is affiliated with that party. The Act does not include a similar provision for a state party committee to make these expenditures on behalf a Presidential candidate. Commission Regulations indicate, however, that a national party committee may make such expenditures through a designated agent, including state and subordinate party committees. If a national party intends to designate a state party committee as its agent for making coordinated party expenditures, the Commission's interpretation of its Regulations requires that the national party should either transfer the funds to the state party committee's bank account for the state party committee to spend or allow the state party committee to use its own funds to make expenditures. See FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981) and Advisory Opinion 1976-108.

4. Pursuant to 2 U.S.C. § 434(b), a political committee must report all receipts and disbursements made during the reporting period including expenditures made in connection with 2 U.S.C. § 441a(d). Pursuant to 2 U.S.C. § 432(i), the treasurer of a political committee must use his or her best efforts to obtain, maintain and submit the information required by the Act.

5. Pursuant to 2 U.S.C. § 441d, when any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly

identified candidate through any broadcasting station, newspaper or any other type of general public political advertising, such communication must clearly state who paid for the communication and whether or not it was authorized by the candidate or his or her authorized campaign committee.

6. The Texas Democratic Party prepared television advertisements in opposition to George Bush and asked Respondents to delegate part of their coordinated party expenditure authority to the Texas Democratic Party in order to comply with the provisions of 2 U.S.C. § 441a(d). In a letter, dated September 20, 1988, from Paul Kirk, Chairman of the DNC, to Robert Slagle, Chairman of the Texas Democratic Party, the DNC designated the Texas Democratic Party as its agent for the purpose of making up to $125,000 in coordinated party expenditures on behalf of the Dukakis/Bentsen general election campaign. In a letter, dated September 23, 1988, from Paul Kirk to Robert Slagle, the DNC amended the above agreement to allow the Texas Democratic Party to make up to $133,000 in expenditures pursuant to 2 U.S.C. § 441a(d). In a letter from Bob Slagle to Harriett Yellin, dated September 20, 1988, the Texas Democratic Party authorized Yellin Media to accept and expend funds as the Texas Democratic Party's agent for the purpose of purchasing television advertisements for the benefit of the Democratic Ticket in Texas. In a second letter, dated September 26, 1988, Bob Slagle authorized Yellin Media to accept funds from the DNC as the Texas Democratic Party's agent. Respondents properly designated the Texas Democratic Party as their 2 U.S.C. § 441a(d)

agent. However, the vendor, the Texas Democratic Party's agent for the purpose of the funds' transfer, was paid with DNC funds already on deposit with the advertising agency. Respondents reported these payments as in-kind contributions to the Texas Democratic Party. In allowing the funds to be used in this manner, Respondents should have reported the payments as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d).

7. The television advertisements in question included a disclaimer which indicated that they were "Paid for by the Texas Democratic Party." Although Respondents' funds on deposit with Yellin Media were used to pay for these advertisements, the advertisements did not state "Paid for by the Democratic National Committee." Moreover, the television advertisements did not indicate whether or not they were authorized by any candidate.

V. 1. Based on the Commission's findings, Respondents misreported the payments for television advertisements in opposition to George Bush as in-kind contributions to the Texas Democratic Party in violation of 2 U.S.C. § 434(b).

2. Based on the Commission's findings, Respondents also failed to include a correct and complete disclaimer on the advertisements in violation of 2 U.S.C. § 441d.

3. Respondents contend that these were not knowing and willful violations.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of two thousand five hundred dollars ($2,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

8/30/90
Date

FOR THE RESPONDENTS:

Christine A. Varney
(Name)
(Position)

8-9-90
Date

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 11, 1990

Scott Blake Harris, Esq.
Williams & Connolly
839 17th Street, N.W.
Washington, D.C. 20006

RE: MUR 2703
Dukakis/Bentsen Committee, Inc. and Robert A. Farmer, as treasurer

Dear Mr. Harris:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

LM Noble (LGL)

Lawrence M. Noble
General Counsel

cc: Jonathan B. Sallet, Esq.
Miller, Cassidy, Larocca & Lewin
2555 M Street, N.W.
Washington, D.C. 20037

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2703

DATE FILMED 9/13/90 CAMERA NO. 2

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 2703.

OGC 8907

HOGAN & HARTSON

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON, DC 20004-1109
202/637-5600

WRITER'S DIRECT DIAL NUMBER

202/637-6460

6701 ROCKLEDGE DRIVE
BETHESDA, MARYLAND 208
301/493-0030

111 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 212
301/659-2700

8300 GREENSBORO DRIVE
McLEAN, VIRGINIA 22102
703/848-2800

CLOSED

90 OCT 26 PH 3:50

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

October 25, 1990

HAND DELIVER

Ms. Frania Monarski
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C.

Re: MUR 2703 DNC Services Corporation

Dear Frania:

Enclosed is the Democratic National Committee's check for $2,500.00 in accordance with the signed conciliation agreement for the above referenced matter.

With submission of the enclosed check we will consider the matter resolved and closed. Please let me know if there are any outstanding issues.

Thank you for your assistance on this matter.

Sincerely,

Christine

Christine A. Varney

CAV:clc

cc: Ursula Culver

Enclosure

3204V

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Oct 26, 1990

TWO WAY MEMORANDUM

TO: Fabrae Brunson
OGC, Docket

FROM: Philomena Brooks PB
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from D.N.C. Service Corporation, check number 30530, dated 10/22/90, and in the amount of $ 2,500.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

==

TO: Philomena Brooks
Accounting Technician

FROM: Fabrae Brunson
OGC, Docket

In reference to the above check in the amount of $ [illegible], the MUR number is [illegible] and in the name of [illegible]. The account into which it should be deposited is indicated below:

__ Budget Clearing Account (OGC), 95F3875.16

__ Civil Penalties Account, 95-1099.160

__ Other: ____________________

____
Signature

____
Date

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
DCNATIONAL
MAIN OFFICE
1801 K STREET, NW
WASHINGTON, D.C. 20006

30530

OCT. 22 90

OCt. 22 19 90

15-120/540 D 01

PAY PAY 2,500.00 DOLLARS $2,500.00

TO THE ORDER OF
Federal Election Commission
999 E Street, N.W.
Washington, DC

ROBERT A. FARMER

⑈030530⑈ ⑆054001204⑆ 262880 5⑈

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

D.N.C. SERVICES CORPORATION

DELUXE - FORM WVCP-3 V-7

MUR 2703

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