



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3242

DATE FILMED 8/12/92 CAMERA NO. 4

CAMERAMAN E.E.J.

92040921789

066 0521

March 20, 1991

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
attn: Lawrence Noble

MUR 3242

91 MAR 26 PM 4:05

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Noble:

This complaint, filed by the National Republican Congressional Committee (hereinafter "NRCC") with its address at 320 First Street S.E., Washington, D.C. 20003, in accordance with 2 U.S.C. §437g(a)(1) and 11 CFR §111.3(a)(b) with the Federal Election Commission (hereinafter "Commission"), alleges violation of the Federal Election Campaign Act of 1971, as amended, (hereinafter "FECA") by Kevin P. Gaughan For Congress, of 4325 Lake Shore Road, Hamburg NY 14075 and P.O. Box 150, Harrisburg, NY 14075, William F. Matthews Jr, Treasurer (hereinafter "Gaughan"); and Mr. Frank J. McGuire, Chairman, McGuire Group, of 476 North Forest Road, Amherst, NY 14221 (hereinafter "McGuire") (Gaughan and McGuire hereinafter jointly, "Respondents").

Respondents have violated federal election law by variously soliciting, making, and receiving a contribution in the form of a loan guarantee. Said loan guarantee, because it was made by an individual who is neither the candidate nor a legitimate lending institution, was in excess of those limits on same enumerated at 2 U.S.C. §441a(a)(1)(A), and 11 CFR §110.1(b)(1), and in direct contravention of the prohibition on the acceptance of same pursuant to 2 U.S.C. §441a(f) and 11 CFR §100.7(a)(1)(i)(A).

LAW

A contribution is defined by the FECA as "...a gift, subscription, loan (emphasis added)...., advance, or deposit of money or anything of value made by any person (emphasis added) for the purpose of influencing any election for Federal office" 11 CFR §100.7(a)(1). The term "loan" is further defined as including "a guarantee, endorsement, and any other form of security" 11 CFR §100.7 (a)(1)(i). Finally, "A loan which exceeds the contribution limitations of 2 U.S.C. §441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid" 11 CFR §100.7 (a)(1)(i)(A).

92040921790

FACTS

Complainant refers the Commission to the attached Schedule C's (LOANS) filed by Gaughan (Exhibits A & B). These are, respectively, the Post-General Election Report, covering the period 10/18/90 - 11/26/90 and the Year End Report, covering the period 11/27/90 - 12/31/90. At Exhibit A, Gaughan reports that on 10/30/90, a loan for \$10,000.00 was secured from the Manufacturers and Traders Trust Co. It is also reported that guarantee for this loan is provided by McGuire, whose occupation is shown as Chairman, McGuire Group. At Exhibit B, Gaughan reports that \$5,000.00 of this same debt has been retired, and that \$5,000.00 remains outstanding and is thusly still guaranteed.

These reports clearly indicate that McGuire did guarantee, and as an individual other than the candidate himself thusly contribute, \$10,000.00 to Gaughan.

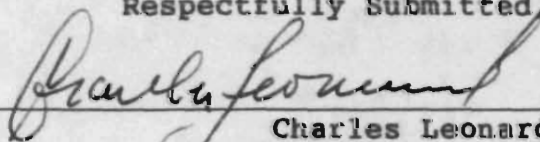
ARGUMENT

Gaughan solicited and accepted a contribution expressly prohibited by the FECA. Again, individuals are limited to contributing \$1,000 per election. Here, Gaughan has solicited and accepted from McGuire, an individual, a prohibited contribution in the form of guarantee for a \$10,000.00 loan. This is an amount ten times that allowed per election by law.

SUMMARY

The NRCC requests that the Commission investigate the violations alleged herein, discovering if and why such violations have occurred and, upon discovering that such violations have indeed occurred, levy any and all penalties and/or sanctions available to it under the law.

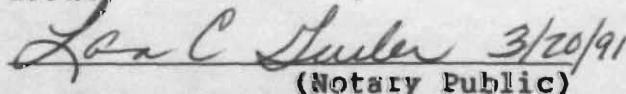
Respectfully Submitted



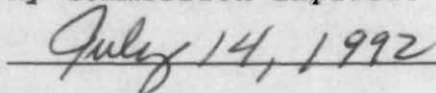
Charles Leonard
Political Director

National Republican Congressional Committee

Subscribed and Sworn to before me this 20th day of March, 1991:


(Notary Public)

My Commission Expires:





92040921791

SCHEDULE C
(Prepaid 1988)

LOANS

Page 1 of 1
(See instructions on page 1 of Form 1041)
Use separate sheets for each company line

Name of Corporation on Form 1041 Kevin P. Gaughan for Congress		E00847363 137677	
A. Full Name, Mailing Address and ZIP Code of Loan Recipient Manufacturers & Traders Trust Co One West Plaza Buffalo, NY 14240		Original Amount of Loan \$10,000.00	B. Date loan received 12/19/90 C. Date due DEMAND D. Interest rate PRIME
E. Amount of loan outstanding at end of this period \$10,000.00		F. Amount of loan outstanding at end of this period \$10,000.00	
G. List all borrowers or guarantors of debt on Form A			
1. Full Name, Mailing Address and ZIP Code Frank J. McGuire 476 North Forest Rd. Amherst, NY 14221		Name of Employer McGuire Group Position Chairman Amount of loan outstanding 10,000.00	
2. Full Name, Mailing Address and ZIP Code Kevin P. Gaughan 4325 Lake Shore Road Hempstead, New York 14075		Name of Employer SELF Position Attorney Amount of loan outstanding 0	
3. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
H. Full Name, Mailing Address and ZIP Code of Loan Recipient			
I. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
J. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
K. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
L. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
M. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
N. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
O. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
P. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
Q. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
R. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
S. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
T. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
U. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
V. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
W. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
X. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
Y. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
Z. Full Name, Mailing Address and ZIP Code 		Name of Employer Position Amount of loan outstanding 	
SUBTOTALS This Period This Page (optional)		\$10,000.00	
TOTALS This Period (Sum from all pages only)		\$10,000.00	
Carry forward amounts shown only in LINE 2, Schedule C, for this line. If on Schedule C, carry forward to appropriate line of Form 1041.			

Name on Certificate (See Part I) KEVIN P GAUGHAN FOR CONGRESS		000347333 137677	
A. Full Name, Mailing Address and ZIP Code of Loan Source Manufacturers & Traders Trust Co. 150 West Niagara Buffalo, NY 14203		Original Amount of Loan 10,000.00	Outstanding Payments to Date 5,000.00
B. Full Name, Mailing Address and ZIP Code of Borrower Frank J McGuire 476 North Forest Rd. Amherst, NY 14221		Outstanding Balance of This Period 5,000.00	
Terms: Date Mailed 10/20/80 Date Due DEMAND Interest Rate PRIME + 1%			
List All Endorsers or Guarantors (If any) to Item A			
1. Full Name, Mailing Address and ZIP Code Kevin P. Gaughan 4325 Lake Shore Rd. Hamburg, NY 14075		Name of Employer McGuire Group Occupation Chairman Amount Guaranteed Outstanding 5,000.00	
2. Full Name, Mailing Address and ZIP Code Frank J McGuire 476 North Forest Rd. Amherst, NY 14221		Name of Employer ERIE COUNTY LEGISLATURE Occupation ATTORNEY Amount Guaranteed Outstanding 5,000.00	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding 	
B. Full Name, Mailing Address and ZIP Code of Loan Source		Original Amount of Loan	Outstanding Payments to Date
C. Full Name, Mailing Address and ZIP Code of Borrower		Outstanding Balance of This Period	
Section: ☐ Primary ☐ General ☐ Other (Specify): Type: ☐ Rep Mailed ☐ Date Due ☐ Interest Rate ☐ Mailed ☐ Special			
List All Endorsers or Guarantors (If any) to Item B			
1. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding 	
2. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding 	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding 	
SUBTOTALS This Period This Page (Include)		5,000.00	
TOTALS This Period (See note to this line only)		5,000.00	

Copy completed schedule only on LINE 2, Schedule G, for this line. If no Schedule G, copy forward to appropriate line of Summary.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 3, 1991

Frank J. McGuire
Chairman
McGuire Group
476 North Forest Road
Amherst, New York 14221

RE: MUR 3242

Dear Mr. McGuire:

The Federal Election Commission received a complaint which alleges that the McGuire Group and you, as Chairman, 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 3242. 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 McGuire Group and you, as Chairman, 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 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 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.

92040921794

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

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner ⁴²

BY: Lois G. Lerner
Associate General Counsel

Enclosures

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

92040921795



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 3, 1991

Kevin P. Gaughan for Congress Committee
William F. Matthews, Treasurer
P.O. Box 150
Hamburg, New York 14075

RE: MUR 3242

Dear Mr. Matthews:

The Federal Election Commission received a complaint which alleges that the Kevin P. Gaughan for Congress Committee ("Committee") 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 3242. 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 Committee and you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 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.

92040921796

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

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner
Associate General Counsel

Enclosures

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

cc: Kevin P. Gaughan
4325 Lake Shore Road
Hamburg, New York 14075

92040921797



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 3, 1991

Charles Leonard
Political Director
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 3242

Dear Mr. Leonard:

This letter acknowledges receipt on March 26, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Kevin P. Gaughan for Congress Committee and William F. Matthews, as treasurer, the McGuire Group and Frank J. McGuire, as Chairman. The respondents will be notified of this complaint within five days.

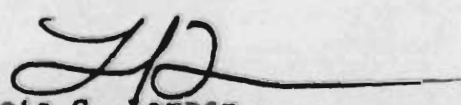
You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3242. 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

92040921798

SAPERSTON & DAY, P.C.

ATTORNEYS AT LAW

GOLDOME CENTER

ONE FOUNTAIN PLAZA

BUFFALO, NEW YORK 14203-1486

716-856-5400

FAX: 716-856-0139

April 22, 1991

DONALD S. DAY
FRANK T. GAGLIONE
FREDERICK A. WOLF
ROGER B. SIMON
GARY L. MUCCI
THOMAS C. BAILEY
NEIL J. KATZ
SAMUEL GOLDBLATT
ROBERT E. SCOTT
CHARLES C. SWANEKAMP
WILLIAM A. LUNDQUIST
JAMES W. GRESBIS
DANIEL M. DARRAGH
DENNIS R. MCCOY
CHARLES G. HUMPHREY
MARTIN J. CLIFFORD
JOSEPH M. SCHNITZER
CHERYL A. POSSENTI
DANIEL R. JOYCE

COUNSEL TO THE FIRM
HOWARD T. SAPERSTON, SR.
MORTON MENDELSON

ARTHUR F. HOLZ
VINCENT F. HAUBER
GARY J. O'DONNELL
THOMAS B. CRONMILLER
ANTHONY J. PIAZZA
STEPHEN E. BARNES
RAYMOND N. MCCABE
CHARLES P. CERCONE
MAUREEN R.L. MUSSENDEN
JUDITH TREGOR SHELTON
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KENNETH M. ALWEIS
CATHERINE T. WETTLAUER
PATRICIA LEWANDOWSKI
STEPHEN L. BARUFFI
RAYMOND P. ENRIGHT, JR.
CATHERINE HABERNEHL
WILLIAM F. CUMMINGS
MARY B. CASEY
THOMAS F. KNAB
JAN ROBERT MCCONNAUGHEY
PAUL A. DAMI
JOHN W. STEINBACH
PAUL A. PETERS
JOANNE E. GOULD
PATRICK S. KENNEY
RONALD A. SIFOS
THOMAS E. LIFTAK
ELLEN G. YOST
WILLIAM C. ALTREUTER
MARGARET LILLIS SNAJCZUK
JAMES H. COSGRIFF, III
KENNETH W. AFRICANO
ALBERT J. D'AQUINO
ROBERT L. GALBRAITH, JR.
ROY A. MURA
ROGER F. COMINSKY
FRANCIS L. GORMAN, III
RICHARD T. SARAF
SCOTT R. JENNETTE
TERRANCE P. FLYNN
JAMES A. LOWERY, III
HARRY E. WERNER
LISA G. MASSARO

PETER L. POWERS

FEDERAL EXPRESS

James Brown, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3242

Dear Mr. Brown:

Enclosed please find two (2) original Statements of Designation of Counsel, executed by Mr. Frank J. McGuire and Mr. Kevin P. Gaughan in connection with the above-captioned matter.

Messrs. McGuire and Gaughan first received your Notice of Complaint on April 10, 1991. However, our office has only recently become involved in the matter and is currently in the process of obtaining and reviewing documents and information pertinent to same.

Since we have not yet obtained all material documents, nor had the opportunity to fully review this matter, we hereby respectfully request that your office grant Messrs. McGuire and Gaughan an additional twenty (20) days in which to respond. If our requested extension is granted, it is our understanding that a reply will then be due on or before May 15, 1991.

Please acknowledge your approval of such an extension by signing and returning the additional copy of this letter, which is enclosed, in the self-addressed stamped envelope provided for that purpose.

91 APR 23 AM 9:11

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 APR 23 AM 10:11

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

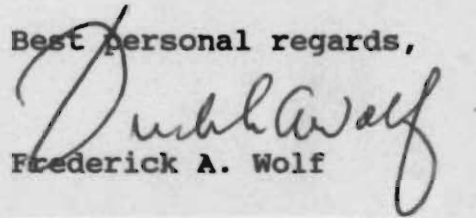
92040921799

SAPERSTON & DAY, P. C.

James Brown, Esq.
April 22, 1991
Page - 2 -

In the interim, should you have any questions or comments regarding this matter, please call me at your convenience.

Best personal regards,



Frederick A. Wolf

FAW:amk

Enclosures

cc.: Mr. Frank J. McGuire
Kevin P. Gaughn, Esq.

Approved and Agreed to this ____ day of April, 1991.

By: _____

Federal Election Commission

92040921800

06-0918

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3242

NAME OF COUNSEL: Saperston & Day, P.C.

ADDRESS: One Fountain Plaza

Buffalo, New York 14203-1486

Attn.: Frederick A. Wolf, Esq.

TELEPHONE: (716) 856-5400

RECEIVED
FEDERAL ELECTION COMMISSION
91 APR 25 AM 10:41

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.

4/15/91
Date

Frank J. McGuire
Signature

RESPONDENT'S NAME: Frank J. McGuire

ADDRESS: 476 North Forest Road

Williamsville, New York 14221

HOME PHONE: (716) 633-9678

BUSINESS PHONE: (716) 826-2010

92040921801

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3242

NAME OF COUNSEL: Saperston & Day, P.C.

ADDRESS: One Fountain Plaza

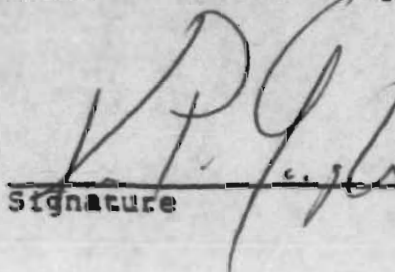
Buffalo, New York 14203-1486

Attn.: Frederick A. Wolf, Esq.

TELEPHONE: (716) 856-5400

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

April 19, 1991
Date


Signature

RESPONDENT'S NAME: Kevin P. Gaughan

ADDRESS: S4325 Lake Shore Road

Hamburg, New York 14075

HOME PHONE: (716) 627-4023

BUSINESS PHONE: (716) 627-4023

92040921802



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 29, 1991

Frederick A. Wolf
Saperston & Day, P.C.
One Fountain Plaza
Buffalo, New York
14203-1486

RE: MUR 3242
-Kevin P. Gaughan for Congress Committee
-Frank J. McGuire

Dear Mr. Wolf:

This is in response to your letter dated April 22, 1991, which we received on April 23, 1991, requesting an extension of 20 days until May 15, 1991, to respond to Commission reason to believe findings in the above cited matter. After considering the circumstances presented in your letter, I have granted the requested extensions. Accordingly, the relevant responses are due by the close of business on May 15, 1991.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

cc: Roger F. Cominsky

92040921803

06-1159

SAPERSTON & DAY, P.C.

ATTORNEYS AT LAW

GOLDOME CENTER

ONE FOUNTAIN PLAZA

BUFFALO, NEW YORK 14203-1486

716-856-5400

FAX: 716-856-0139

May 14, 1991

DONALD S. DAY
FRANK T. GAGLIONE
FREDERICK A. WOLF
ROGER B. SIMON
GARY L. MUCCI
TRICIA T. SEMMELHACK
RICHARD J. DAY
LAWRENCE A. SCHULZ
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BRAD F. RANDACCIO
LAWRENCE J. GALLICK
JOHN L. KIRSCHNER
NEIL A. GOLDBERG
THOMAS F. SEGALLA
BENJAMIN J. ANDREWS
THOMAS C. BAILEY
NEIL J. KATZ
ROBERT L. BESANCENEY
WILLIAM G. GANDY
ROBERT W. MICHALAK
TIMOTHY C. CASHMORE
EDWARD M. GRIFFITH, JR.
RAYMOND L. FINK
DAVID C. FIELDING
BRUCE S. ZEFTTEL
THOMAS S. GILL
BRIAN N. LEWANDOWSKI
LAURENCE D. BEHR
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NATHAN OSTROFF
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MELANIE COLLINS TISDALE
THOMAS F. KNAB
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LISA G. MASSARO
ARTHUR F. HOLZ*
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GARY J. O'DONNELL
LOUIS C. FESSARD
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ROGER F. COMINSKY
CATHERINE HABERMEHL
WILLIAM F. CUMMINGS**
TERRANCE P. FLYNN
JAMES A. LOWERY, III
PAUL A. DAMI
PETER L. POWERS

COUNSEL TO THE FIRM
HOWARD T. SAPERSTON, SR.
MORTON MENDEL SOHN

BY FEDERAL EXPRESS

James Brown, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR3242
Mr. Frank J. McGuire
Kevin P. Gaughan for Congress Committee
Our File BC04343

Dear Mr. Brown:

This response is submitted on behalf of Mr. Frank J. McGuire, 476 North Forest Road, Amherst, New York, 14221 (hereinafter "McGuire") and the Kevin P. Gaughan for Congress Committee, 4325 Lakeshore Road, Hamburg, New York, 14075, William F. Matthews, Jr., Treasurer (hereinafter "Committee") (McGuire and the Committee hereinafter jointly, "Respondents").

FACTS

Attached hereto as Exhibit A is a copy of a Guarantee Agreement (the "Guarantee") dated October 30, 1990 between Manufacturers & Traders Trust Company and Francis J. McGuire, whereby McGuire guaranteed payment of a debt by the Committee in the amount of \$10,000.00. The debt of the Committee was evidenced by a demand note dated October 30, 1990 (the "Demand Note") a copy of which is attached hereto as Exhibit B.

McGuire's Guarantee was fully disclosed on Schedule C (LOANS) to the Committee's Report of Receipts and Disbursements filed with the Federal Election Commission (the "Commission"), dated 12/6/90, covering the period from 10/18/90 through 11/26/90, a copy of which is attached hereto as Exhibit C. It should be noted that such Report contains activity for both a Primary Election and a General Election.

* ADMITTED TO PRACTICE IN CALIFORNIA ONLY
** ADMITTED TO PRACTICE IN PENNSYLVANIA ONLY

91 MAY 15 AM 10:36

91 MAY 15 AM 11:41

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF LEGAL COUNSEL

92040921804

James Brown, Esq.

May 14, 1991

Page - 2 -

Furthermore, Schedule C (LOANS) to the Committee's Report of Receipts and Disbursements filed with the Commission, dated 1/30/91, covering the period from 11/27/90 through 12/31/90, a copy of which is attached hereto as Exhibit D, shows that \$5,000.00 of this amount had been paid to that date, with an amount guaranteed remaining outstanding of \$5,000.00.

CONCLUSIONS

The following conclusions are stated in the alternative, and each should be considered independently from the others:

1. The Guarantee is not a legally binding obligation of McGuire since it is prohibited by Federal statute and the enforcement of a contract to perform a function prohibited by law is prohibited by public policy. Consequently, McGuire has not obligated himself under his Guarantee and such Guarantee should not be considered a contribution in excess of the limitation contained in the Federal Election Campaign Act of 1971, as amended (hereinafter "FECA").

2. The Reports of Receipts and Disbursements filed by the Committee fully disclose the Guarantee by McGuire and thus evidence the lack of any intent on the part of McGuire and/or the Committee to evade the provisions of the FECA. Consequently, no sanctions or fines should be imposed against McGuire or the Committee for such an alleged violation of the FECA.

3. The Committee has reduced the outstanding obligation under the Demand Note and will continue to pay-down such obligation so as to discharge McGuire's alleged obligations under the Guarantee. Consequently, any current violation of the FECA will be voluntarily cured by the Committee.

DISCUSSION

1. Unenforceable Guarantee.

The FECA defines the term "contribution" to include any loan made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i).

Additionally, the term "loan" has by regulation been deemed to include a guarantee. 11 CFR § 100.7(a)(1)(i). The

92040921805

James Brown, Esq.
May 14, 1991
Page - 3 -

regulations go on to state that a loan which exceeds the contribution limits of 2 U.S.C. § 441a shall be unlawful. 11 CFR § 100.7(a)(1)(i)(A). However, 11 CFR § 100.7(a)(1)(i)(C) states, in part, that a loan is a contribution by each guarantor, and each guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. (Emphasis added).

Federal case law has stated that the purpose of the FECA is to limit the actuality and appearance of corruption resulting from large individual financial contributions. Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976).

Both federal and New York State case law, however, have held that agreements against public policy and/or illegal agreements are void and unenforceable. See, Silvera v. Safra, 361 N.Y.S.2d 250, 79 Misc.2d 919, (N.Y. Sup. 1974); Kaiser-Frazer Corp. v. Otis & Co., 195 F.2d 838 (2d Cir. 1952); Key Bank v. Crawford 600 F.Supp. 843, affd. 781 F.2d 39 (D.C. PA 1985).

For example, in Sang Moo Cho v. North Shore Flushing, Inc., 436 N.Y.S.2d 843, 107 Misc.2d 1098 (1981) the court held that a void contract is one which cannot have any legal effect and such void contracts are treated as if the agreement had never been entered into. Additionally, the Key Bank Court stated that any agreement which violates a statute is illegal, unenforceable, and void ab initio, if the subject of the agreement is proscribed by statute. Key Bank, at 846.

The case law also indicates that ignorance of the aspects of the agreement in contravention of law or public policy by one of the parties to an agreement will not make such an agreement enforceable. See, Lowenschuss v. Kane, 520 F.2d 255 (2d Cir. 1975); Parsky Funeral Home, Inc. v. Shapiro, 372 N.Y.S.2d 288, 83 Misc.2d 566 (1975); In Re Independent Clearing House Co., 77 B.R. 843 (D.C.UT 1987). Notwithstanding such case law, the Demand Note and the Guarantee both clearly state that the debt was incurred by the Committee, thus putting the bank which made the loan on notice of such fact.

In light of the above analysis, we submit that McGuire did not effectively agree to be liable in a written agreement for any portion of the debt of the Committee in excess of the contribution limitations of the FECA, since his Guarantee is, by definition, void and unenforceable as being contrary to public policy. Consequently, McGuire did not make a contribution in excess of the contribution limits contained in the FECA.

92040921806

James Brown, Esq.
May 14, 1991
Page - 4 -

A finding consistent with the above analysis would advance the stated purpose of the FECA by putting lenders on notice that guarantees taken in contravention of the FECA are void and unenforceable. As a result, informed lenders would be encouraged to refrain from soliciting unenforceable guarantees of otherwise permissible loans to political committees, thus decreasing the opportunity for misconceptions to arise concerning the propriety of the electoral process.

2. McGuire's alleged Guarantee was fully disclosed on the Reports of Receipts and Disbursements filed by the Committee with the Commission. These filings demonstrate the lack of any knowing and willful violation of the FECA by the Committee and/or McGuire. As a result, no action should be taken by the Commission under 2 U.S.C. § 437g(a)(6)(c) for a knowing and willful violation of the FECA. See, Federal Election Commission v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). Federal case law has also held that the intent of a defendant can be considered by the Commission in deciding whether or not to exercise its discretion to assess a penalty under 2 U.S.C. § 437g(a)(6)(B). See, Federal Election Commission v. Furgatch, 869 F.2d 1256 (9th Cir. 1989). Other factors which have been considered in the assessment of discretionary civil penalties include the incurrence of legal fees and the repayment of contributions by a political committee. See, Federal Election Commission v. Gus Savage for Congress, 606 F.Supp. 541 (N.D. IL 1985); Federal Election Commission v. National Education Association, 457 F.Supp. 1102 (D.D.C. 1978).

3. Notwithstanding the provisions of 11 CFR § 100.7(a)(1)(i)(A) which states that a loan which exceeds the contribution limitations of the FECA shall be unlawful whether or not it is repaid, subsection (D) of § 100.7(a)(1)(i) states that a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. (emphasis added). Subsection (D) goes on to provide that a loan, to the extent it is repaid, is no longer a contribution. (emphasis added). Furthermore, 11 CFR § 100.7(a)(1)(i)(C) provides that any reduction in the unpaid balance of the loan shall reduce proportionately the amount guaranteed by each guarantor by the Commission.

The Committee has reduced the principal balance remaining outstanding under the Demand Note, and will continue to pay-down such amount until McGuire's alleged obligations under his Guarantee are extinguished. The actions taken and to be taken by the Committee to extinguish such debt shall cure any violation of the FECA alleged to have occurred in the Complaint

92040921807

SAPERSTON & DAY, P.C.

James Brown, Esq.

May 14, 1991

Page - 5 -

filed by the National Republican Congressional Committee, dated March 20, 1991. Consequently, no further action need be taken by the Commission with respect to such alleged violation.

SUMMARY

The Respondents contend that no violation of the FECA occurred since McGuire's Guarantee was void and unenforceable as a matter of law. In the alternative, the Respondents contend that no knowing or willful violation of the FECA occurred, or that all appropriate action has and will be taken to remedy any alleged violation of the FECA which currently exists. The respondents respectfully request that the Commission dismiss the charges pending against them, or alternatively, take no action against them in response to the Complaint.

Please contact the undersigned should you have any questions and/or desire any additional information concerning our clients' position in this matter.

Very truly yours,

SAPERSTON & DAY, P.C.

By: Frederick A. Wolf
Frederick A. Wolf, Esq.

FAW:anj

cc.: Mr. Frank J. McGuire
Kevin P. Gaughan, Esq.

92040921808



EXHIBIT A
GUARANTEE AGREEMENT
Manufacturers and Traders Trust Company

Date October 30, 19 90

Meaning of some words. In this agreement, the words "you" and "your" mean anyone signing this agreement. The words "we," "us" and "our" mean Manufacturers and Traders Trust Company, One M&T Plaza, Buffalo, New York 14240. The words "the borrower" mean _____

Name and

Kevin Gaughan for Congress Committee

address of person receiving credit from us

The words "debt of the borrower" mean any amount owing to us now or in the future by the borrower. But the words "debt of the borrower" do not include any amount owing under any retail instalment contract or obligation except that between _____

and _____

dated _____, 19 _____, covering _____

and under which the balance owing was originally \$ _____ and is now \$ _____

Guarantee. To get us to provide or continue credit to the borrower, you guarantee the payment of each debt of the borrower. The guarantee means that you must immediately pay any debt of the borrower that becomes overdue, whether or not we try to collect it from anyone else. But if the following blank is completed, you will not be liable under this agreement for paying more than the total of \$ 10,000.00 of credit plus all finance charges, other charges and costs of collection owing on account of that amount of credit. A finance charge is a charge for credit, such as interest. The guarantee is not subject to any condition.

No notice or loss of rights. We do not have to notify you if any debt of the borrower or any amount owing under this agreement is not paid by the day it becomes due. We can do any of the following without notifying you or losing any right against you or any property belonging to you:

1. Accept any check or other order marked "paid in full" or with similar language as payment of any debt of the borrower or any amount owing under this agreement;
2. Give additional time for the payment of any debt of the borrower or any amount owing under this agreement, regardless of the number of times we previously did so and regardless of the length of any additional time we previously gave;
3. Exercise, give up, fail to exercise or delay exercising any right against any person or property;
4. Fail to protect any interest in any property, whether by failing to file any document that must be filed in a public record to give the public notice of the interest, by failing to be named on any certificate of title issued for the property or in any other way;
5. Change any provision of any agreement between the borrower and us; or
6. Change any provision of this agreement if anyone signing this agreement agrees.

For example, we can sue you under this agreement whether or not we (1) sue anyone else or (2) use any money deposited with us by you or anyone else to pay any debt of the borrower or any amount owing under this agreement.

Collection costs. If we hire an attorney to bring a lawsuit to collect any amount owing under this agreement, you must pay us the attorney's fee and all court costs we have to pay in connection with the lawsuit. The attorney's fee will be 20% of that amount unless a court sets a smaller fee.

Change of address. If your address changes, you must promptly notify us in writing of the new address.

Responsibility. You and everyone else signing this agreement will be, individually and together, liable under it. Your responsibility under this agreement will not be affected if the responsibility under it of anyone else signing it ends.

Changes and giving up of rights. No change in this agreement can be made except in writing. No right against you or any property belonging to you can be given up by us except in writing.

Evidence. In any legal proceeding involving this agreement, any copy of this agreement kept by us in the regular course of our business is to be admitted in evidence as an original of this agreement.

Continuing agreement. The payment of each debt of the borrower will not terminate this agreement. Except as provided in the next section, this agreement will continue in effect and apply to any debt of the borrower that becomes owing later.

End of responsibility under agreement. At any time, anyone signing this agreement can send us written notice that we are not to rely on him or her to guarantee the payment of any debt of the borrower resulting from credit provided in the future. Then his or her responsibility under this agreement will end with the payment of each debt of the borrower resulting from credit provided before we receive the notice and have a reasonable time to act on it. If we receive written notice of the death of anyone signing this agreement, his or her responsibility under this agreement will end with the payment of each debt of the borrower resulting from credit provided before we receive the notice and have a reasonable time to act on it. This agreement will end when the responsibility under it of everyone signing it has ended.

Reasonable time to act. A reasonable time for us to act on any notice or document will not end until at least the close of business on our first banking day following our banking day we receive the notice or document.

Conflicts. If any part of this agreement conflicts with any applicable law or regulation, the law or regulation will control, and this agreement will be considered changed to the extent necessary to comply with the law or regulation.

Continued effectiveness. If any part of this agreement is determined by a court to be invalid, the rest will remain in effect.

What law applies. Any legal question about this agreement will be decided in accordance with New York State law.

Entire agreement. This agreement is the final and complete agreement between you and us concerning the guarantee made in this agreement. Any statement concerning the guarantee made by any of our employees is not part of this agreement.

Agreement. You agree to be bound by all provisions of this agreement.

Signature and address of guarantor 1

Signature and address of guarantor 2

SIGNATURE ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF Erie) SS.

On the 30 day of October in the year 1990, before me personally came Francis J. McGuire to me known and known to me to be the person(s) described in and who executed the above instrument, and _____ he (they) jointly and severally acknowledged to me that _____ he (they) executed the same.

BERNARD J. CONNELLY
Notary Public, State of New York
Qualified in Erie County

My Commission Expires Nov. 30, 1992

Francis J. McGuire
Notary Public



DEMAND NOTE

Borrower's Waivers and Consents. In any action or other legal proceeding relating to this Note, the Borrower (1) waives the personal jurisdiction of any State or federal court located in the State of New York, (2) waives objection to the taking of depositions, (3) waives personal service of process, (4) consents to service of process by registered mail directed to the Borrower at the last address shown on the account records related to this Note, with such copies of process to be delivered or mailed to any other address shown on the account records, (5) waives any right of setoff or any defense based upon a statute of limitation or any statute of usury, or any statute of redemption, or any statute of sale, or any statute as a direct or indirect result of any such statute, and (6) consents to the entry of judgment in favor of the Lender in the event of a default.

Waiver of Jury Trial: The Borrower and the Bank waive any right to trial by jury in connection with this Note.

☐ Replacement Note: This Note is given in replacement of and in substitution for, but not in payment of, a note dated 19____ in the original principal amount of \$_____ issued by Borrower to the Bank.

Preauthorized Transfers from Deposit Account. If a deposit account number is provided in the following blank the Borrower hereby authorizes the Bank to debit Borrower's deposit account #_____ with the Bank automatically for the full amount of each interest payment which becomes due under this Note and for any principal payment as directed by Borrower's Authorized Representative for such account, by telephone.

Tax ID/SS#_____

Kevin Gaughan For Congress Committee
BORROWER

By: _____
Kevin Gaughan

Name of Witness _____

Signature of Witness _____

ACKNOWLEDGMENT

STATE OF New York)
COUNTY OF Erie) SS.

On the 30 day of October in the year 19 90, before me personally came
Kevin Gaughan

- ☒ Individual(s) to me known and known to me to be the person(s) described in and who executed the above instrument, and he (they) jointly and severally acknowledged to me that he (they) executed the same.
- ☐ Partnership to me known and known to me to be a general partner of the partnership described in and which executed the above instrument, and he duly acknowledged to me that he executed the above instrument as authorized by and on behalf of said partnership.
- ☐ Corporation to me known, who, being by me duly sworn, did depose and say that he is the _____ of the corporation described in and which executed the above instrument and that he signed his (her) name thereto by order of the board of directors of said corporation.
- ☐ Trust or Estate to me known who stated that he is the _____ of the trust or estate described in and which executed the above agreement and that he executed the same as such trustee or executor for and on behalf of said trust or estate.

REPORT OF RECEIPTS AND DISBURSEMENTS

For An Authorized Committee
(Summary Page)

EXHIBIT C

USE FEC MAILING LABEL
OR
TYPE OR PRINT

1. NAME OF COMMITTEE (in full) KEVIN P. GAUGAN FOR CONGRESS		2. FEC IDENTIFICATION NUMBER 137677
ADDRESS (number and street) ☐ Check if different than previously reported. P.O. Box 150		000247353
CITY, STATE and ZIP CODE Hamburg, New York 14075	STATE/DISTRICT NY / 31	3. IS THIS REPORT AN AMENDMENT? ☐ YES ☒ NO

4. TYPE OF REPORT

☐ April 15 Quarterly Report	☐ Twelfth day report preceding _____ (Type of Election)
☐ July 15 Quarterly Report	election on _____ in the State of _____
☐ October 15 Quarterly Report	☒ Thirtieth day report following the General Election on
☐ January 31 Year End Report	11/6/90 in the State of New York
☐ July 31 Mid-Year Report (Non-election Year Only)	☐ Termination Report

This report contains activity for ☒ Primary Election ☒ General Election ☐ Special Election ☐ Runoff Election

SUMMARY

5. Covering Period	COLUMN A This Period	COLUMN B Calendar Year-to-Date
10/18/90 through 11/26/90		
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e))	32059.09	89066.09
(b) Total Contribution Refunds (from Line 20(d))	250.00	2475.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	31809.09	86591.09
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	36631.07	83720.04
(b) Total Offsets to Operating Expenditures (from Line 14)	20.00	20.00
(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	36611.07	83700.04
8. Cash on Hand at Close of Reporting Period (from Line 27)	6544.94	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	-	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	10318.50	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer William F. Matthews, Jr.	Date 12/6/90
Signature of Treasurer	

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

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FEC FORM 3
(revised 4/87)

92040921812

LOANS

Name of Committee (in Full) Kevin P. Gaughan for Congress		000247363 137677	
A. Full Name, Mailing Address and ZIP Code of Loan Source Manufacturers + Traders Trust Co. One MIT Plaza Buffalo, NY 14240		Original Amount of Loan \$10,000.00	Cumulative Payment To Date —
Balance Outstanding at Close of This Period \$10,000.00			
Election: ☐ Primary ☒ General ☐ Other (specify):			
Terms: Date Incurred <u>10/30/90</u> Date Due <u>Demand</u> Interest Rate <u>PRIME + 1</u> (Apr) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item A			
1. Full Name, Mailing Address and ZIP Code Frank J. McGuire 476 North Forest Rd. Amherst, NY 14221		Name of Employer McGuire Group Occupation Chairman Amount Guaranteed Outstanding: \$ 10,000.00	
2. Full Name, Mailing Address and ZIP Code Kevin P. Gaughan 4325 Lake Shore Road Hamburg, New York 14075		Name of Employer Self Occupation Attorney Amount Guaranteed Outstanding: \$ 10,000.00	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
B. Full Name, Mailing Address and ZIP Code of Loan Source		Original Amount of Loan	Cumulative Payment To Date
Balance Outstanding at Close of This Period			
Election: ☐ Primary ☐ General ☐ Other (specify):			
Terms: Date Incurred _____ Date Due _____ Interest Rate _____ (Apr) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item B			
1. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
2. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
SUBTOTALS This Period This Page (optional)		\$ 10,000.00	
TOTALS This Period (last page in this line only)		\$ 10,000.00	
Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.			

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REPORT RECEIPTS AND DISBURSEMENTS

For An Authorized Committee
(Summary Page)

EXHIBIT D

1. NAME OF COMMITTEE (in full)

KEVIN P. GAUGHAN FOR CONGRESS

ADDRESS (number and street) ☐ Check if different than previously reported.

P.O. BOX 150

CITY, STATE and ZIP CODE

HAMBURG, NY 14075

STATE/DISTRICT

NY/31

2. FEC IDENTIFICATION NUMBER

137677

C00247353

3. IS THIS REPORT AN AMENDMENT?

☐ YES

☒ NO

4. TYPE OF REPORT

☐ April 15 Quarterly Report

☐ Twelfth day report preceding

(Type of Election)

☐ July 15 Quarterly Report

election on _____ in the State of _____

☐ October 15 Quarterly Report

☐ Thirtieth day report following the General Election on

☒ January 31 Year End Report

in the State of _____

☐ July 31 Mid-Year Report (Non-election Year Only)

☐ Termination Report

This report contains activity for

☐ Primary Election

☒ General Election

☐ Special Election

☐ Runoff Election

SUMMARY

5. Covering Period	COLUMN A This Period	COLUMN B Calendar Year-to-Date
11/27/90 through 12/31/90		
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e))	805.00	91,121.09
(b) Total Contribution Refunds (from Line 20(d))	0	2,475.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	805.00	88,646.09
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	2,329.17	86,049.21
(b) Total Offsets to Operating Expenditures (from Line 14)	41.16	61.16
(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	2,288.01	85,988.05
8. Cash on Hand at Close of Reporting Period (from Line 27)	825.44	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	5,150.00	

For further information contact:
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800-424-9530
Local 202-376-3120

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

William F. Matthews, Jr.

Signature of Treasurer

Date

1/30/91

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

FEC FORM 3

(revised 4/87)

LOANS

to
line 3
sched. 3

Name of Committee (in Full) KEVIN P. GAUGHAN FOR CONGRESS		000247353 137677	
A. Full Name, Mailing Address and ZIP Code of Loan Source Manufacturers + Traders Trust Co. ONE M + T Plaza BUFFALO, NY 14240		Original Amount of Loan 10,000.00	Cumulative Payment To Date 5,000.00
Election: ☐ Primary ☒ General ☐ Other (specify):		Balance Outstanding at Close of This Period 5,000.00	
Terms: Date Incurred 10/30/90 Date Due DEMAND Interest Rate PRIME + 1% ☐ Secured			
List All Endorsers or Guarantors (if any) to Item A			
1. Full Name, Mailing Address and ZIP Code Frank J. McGuire 476 North Forest Rd. Amherst, NY 14221		Name of Employer McGuire Group Occupation Chairman Amount Guaranteed Outstanding: \$ 5,000.00	
2. Full Name, Mailing Address and ZIP Code Kevin P. Gaughan 4325 Lake Shore Rd. Hamburg, NY 14075		Name of Employer ERIE COUNTY LEGISLATURE Occupation ATTORNEY Amount Guaranteed Outstanding: \$ 5,000.00	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
B. Full Name, Mailing Address and ZIP Code of Loan Source		Original Amount of Loan	Cumulative Payment To Date
Election: ☐ Primary ☐ General ☐ Other (specify):		Balance Outstanding at Close of This Period	
Terms: Date Incurred _____ Date Due _____ Interest Rate _____ % (apr) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item B			
1. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
2. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
3. Full Name, Mailing Address and ZIP Code		Name of Employer Occupation Amount Guaranteed Outstanding: \$	
SUBTOTALS This Period This Page (optional)			5,000.00
TOTALS This Period (last page in this line only)			5,000.00
Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.			

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RECEIVED
F.E.C.
SECRETARIAT

91 JUL 26 PM 5:18

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3242
DATE COMPLAINT RECEIVED
BY OGC: 3/29/91
DATE OF NOTIFICATION TO
RESPONDENTS: 4/3/91
STAFF MEMBER: J. Albert Brown

COMPLAINANT: Charles Leonard
Political Director, National Republican
Congressional Committee

RESPONDENTS: Kevin P. Gaughan for Congress Committee and
William F. Matthews, as treasurer

Frank J. McGuire

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.7(a)(1)(i)(A)
11 C.F.R. § 110.1(b)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter involves a complaint filed by Charles Leonard, as Political Director of the National Republican Congressional Committee. The complaint alleges that Frank J. McGuire guaranteed a loan to the Kevin P. Gaughan for Congress Committee, and William F. Matthews Jr., as treasurer (collectively referred to as "the Committee"), in violation of the monetary limits established at 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). The complaint further alleges that the

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Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 100.7(a)(1)(i)(A), by soliciting and receiving the McGuire guaranteed loan.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Such contributions are limited by the Act to not more than \$1,000 from any individual with respect to any election for Federal office.

2 U.S.C. § 441a(a)(1). Commission regulations define a "loan" as "a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.7(a)(1)(i). That same section of the Commission regulations goes on to provide that "[a] loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid."

11 C.F.R. § 100.7(a)(1)(i)(A). Section 441a(f) of the Act provides that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limits of Section 441a.

B. The Facts

As part of the Committee's reporting obligations, both the 1990 Post-General Election Report and the 1990 Year End Report reflect a loan guarantee made by Frank J. McGuire for \$10,000. See Attachment I, pp. 10 & 12.

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Respondents' counsel submits three alternative arguments in support of the position that the loan guarantee does not justify further action by the Commission. First, counsel argues that because the guarantee is prohibited under federal law, it is not legally binding upon McGuire, and should not be considered a contribution in excess of the limitations contained in the Act. Second, counsel asserts that due to full disclosure the Committee lacked any intent to evade the provisions of the Act, and thus no civil penalty should be assessed. Third, counsel contends that the Committee has mitigated the violation by reducing the outstanding obligation by \$5,000 and that it continues to reduce the debt, thus voluntarily "curing" the violation. As discussed below, each of these arguments fails to vitiate the original violation, and none obviates the need for Commission enforcement action.

Counsel for respondents relies upon the wording of the Commission regulations at Section 100.7(a)(1)(i)(C) to maintain that no violation has occurred because Mr. McGuire was never "liable" for greater than \$1,000 of the guarantee. Section 100.7(a)(1)(i)(C) states in part:

Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. . . .

Counsel cites several cases supporting the proposition that agreements against public policy and/or illegal agreements are

void and unenforceable, even when a party to such an agreement is ignorant of the fact that it contravenes the law. See Attachment I, pg. 3. Here counsel points out that the bank was on notice that the debt was incurred by the Committee, and thus the bank should have known that the guarantee was in excess of the Act's contribution limits. Counsel then argues that because the guarantee was in violation of the statute, it was void and unenforceable, and as such Mr. McGuire "did not effectively agree to be liable . . . in excess of the contribution limitations of the FECA" Id. Counsel's argument is circular and ignores the true emphasis of Section 100.7(a)(1)(i)(C), which is on the act of "agreeing to be liable." There is no question that Mr. McGuire agreed to be liable as a loan guarantor for an amount in excess of \$1,000, in violation of the Act and Commission regulations.

Given that the loan guarantee was fully disclosed, counsel for respondents maintains that the Commission should exercise its discretion by taking no further action in this matter. Counsel also notes that the Committee has made payments to reduce the outstanding loan amount, and that it will continue to do so. Though the violation does not appear to have been knowingly and willfully made, these actions more appropriately go toward mitigation of the civil penalty.

Given the discussion above, the Office of the General Counsel recommends that the Commission find reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f).

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Consequently, this Office recommends that the Commission also find reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A).

III. RECOMMENDATIONS

1. Find reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f).

2. Find reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A).

4. Approve the attached Factual and Legal Analyses (2).

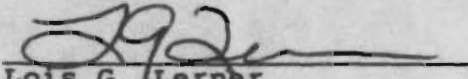
5. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date

7/24/91

BY:


Lois G. Lerner
Associate General Counsel

Attachments

- I. Complaint
- II. Respondents May 14, 1991 Submission.
- III. Factual and Legal Analyses (2).

92040921820

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Kevin P. Gaughan for Congress)
Committee and William F. Mathews,)
as treasurer.)

MUR 3242

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 31, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3242:

1. Find reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Mathews Jr., as treasurer, violated 2 U.S.C. § 441a(f).
2. Find reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A).
3. Approve the Factual and Legal Analyses, as recommended in the General Counsel's Report dated July 24, 1991.
4. Approve the appropriate letter, as recommended in the General Counsel's Report dated July 24, 1991.

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

Attest:

7-31-91
Date

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

Received in the Secretariat:
Circulated to the Commission:
Deadline for votes:

Fri., July 26, 1991 11:00 a.m.
Mon., July 29, 1991 11:00 a.m.
Wed., July 31, 1991 11:00 a.m.

92040921821



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1991

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486

RE: MUR 3242

-Mr. Frank J. McGuire
-Kevin P. Gaughan for Congress
Committee and William F. Matthews, Jr.,
as treasurer

Dear Mr. Wolf:

On April 3, 1991, the Federal Election Commission notified your clients, Mr. Frank J. McGuire, the Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., 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 you, the Commission, on July 31, 1991, found that there is reason to believe the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act. On that same date, the Commission found that there is reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A), also a provision of the Act. The Factual and Legal Analyses, which formed the bases for the Commission's findings, are attached for your information.

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

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

If you are interested in pursuing pre-probable cause

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MUR 3242

Frederick A. Wolf, Esq.

Page 2

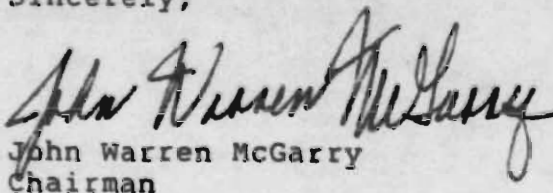
conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation 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 James Brown, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures

Factual & Legal Analyses (2)

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Frank J. McGuire

MUR: 3242

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The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Such contributions are limited by the Act to not more than \$1,000 from any individual with respect to any election for Federal office.

2 U.S.C. § 441a(a)(1). Commission regulations define a "loan" as "a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.7(a)(1)(i). That same section of the Commission regulations goes on to provide that "[a] loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid."

11 C.F.R. § 100.7(a)(1)(i)(A). Section 441a(f) of the Act provides that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limits of Section 441a.

As part of the Kevin P. Gaughan for Congress Committee's reporting obligations, both the 1990 Post-General Election Report and the 1990 Year End Report reflect a loan guarantee made by Frank J. McGuire for \$10,000.

Respondents' counsel submits three alternative arguments in support of the position that the loan guarantee does not justify

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further action by the Commission. First, counsel argues that because the guarantee is prohibited under federal law, it is not legally binding upon McGuire, and should not be considered a contribution in excess of the limitations contained in the Act. Second, counsel asserts that due to full disclosure the Committee lacked any intent to evade the provisions of the Act, and thus no civil penalty should be assessed. Third, counsel contends that the Committee has mitigated the violation by reducing the outstanding obligation by \$5,000 and that it continues to reduce the debt, thus voluntarily "curing" the violation. As discussed below, each of these arguments fails to vitiate the original violation, and none obviates the need for Commission enforcement action.

Counsel for respondents relies upon the wording of the Commission regulations at Section 100.7(a)(1)(i)(C) to maintain that no violation has occurred because Mr. McGuire was never "liable" for greater than \$1,000 of the guarantee. Section 100.7(a)(1)(i)(C) states in part:

Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. . . .

Counsel cites several cases supporting the proposition that agreements against public policy and/or illegal agreements are void and unenforceable, even when a party to such an agreement is ignorant of the fact that it contravenes the law. Here

counsel points out that the bank was on notice that the debt was incurred by the Committee, and thus the bank should have known that the guarantee was in excess of the Act's contribution limits. Counsel then argues that because the guarantee was in violation of the statute, it was void and unenforceable, and as such Mr. McGuire "did not effectively agree to be liable . . . in excess of the contribution limitations of the FECA" Counsel's argument is circular and ignores the true emphasis of Section 100.7(a)(1)(i)(C), which is on the act of "agreeing to be liable." There is no question that Mr. McGuire agreed to be liable as a loan guarantor for an amount in excess of \$1,000, in violation of the Act and Commission regulations.

Therefore, there is reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kevin P. Gaughan for Congress and MUR: 3242
William F. Matthews, Jr., as treasurer

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Such contributions are limited by the Act to not more than \$1,000 from any individual with respect to any election for Federal office.

2 U.S.C. § 441a(a)(1). Commission regulations define a "loan" as "a guarantee, endorsement, and any other form of security."

11 C.F.R. § 100.7(a)(1)(i). That same section of the Commission regulations goes on to provide that "[a] loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid."

11 C.F.R. § 100.7(a)(1)(i)(A). Section 441a(f) of the Act provides that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limits of Section 441a.

As part of the Kevin P. Gaughan for Congress Committee's reporting obligations, both the 1990 Post-General Election Report and the 1990 Year End Report reflect a loan guarantee made by Frank J. McGuire for \$10,000.

Respondents' counsel submits three alternative arguments in support of the position that the loan guarantee does not justify

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further action by the Commission. First, counsel argues that because the guarantee is prohibited under federal law, it is not legally binding upon McGuire, and should not be considered a contribution in excess of the limitations contained in the Act. Second, counsel asserts that due to full disclosure the Committee lacked any intent to evade the provisions of the Act, and thus no civil penalty should be assessed. Third, counsel contends that the Committee has mitigated the violation by reducing the outstanding obligation by \$5,000 and that it continues to reduce the debt, thus voluntarily "curing" the violation. As discussed below, each of these arguments fails to vitiate the original violation, and none obviates the need for Commission enforcement action.

Counsel for respondents relies upon the wording of the Commission regulations at Section 100.7(a)(1)(i)(C) to maintain that no violation has occurred because Mr. McGuire was never "liable" for greater than \$1,000 of the guarantee. Section 100.7(a)(1)(i)(C) states in part:

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Counsel cites several cases supporting the proposition that agreements against public policy and/or illegal agreements are void and unenforceable, even when a party to such an agreement is ignorant of the fact that it contravenes the law. Here

counsel points out that the bank was on notice that the debt was incurred by the Committee, and thus the bank should have known that the guarantee was in excess of the Act's contribution limits. Counsel then argues that because the guarantee was in violation of the statute, it was void and unenforceable, and as such Mr. McGuire "did not effectively agree to be liable . . . in excess of the contribution limitations of the FECA" Counsel's argument is circular and ignores the true emphasis of Section 100.7(a)(1)(i)(C), which is on the act of "agreeing to be liable." There is no question that Mr. McGuire agreed to be liable as a loan guarantor for an amount in excess of \$1,000, in violation of the Act and Commission regulations.

Therefore, there is reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f).

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GARY J. O'DONNELL

ATTORNEYS AT LAW
GOLDOME CENTER
ONE FOUNTAIN PLAZA
BUFFALO, NEW YORK 14203-1486
716-856-5400
FAX: 716-856-0139

ARTHUR F. HOLZ
PAUL A. PETERS
THOMAS B. CRONMILLER
ANTHONY J. PIAZZA
PETER L. ELLIOTT
WILLIAM C. ALTREUTER
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BRIAN D. KNAUTH

COUNSEL TO THE FIRM

HOWARD T. SAPERSTON, SR.
MORTON MENDELSON

August 14, 1991

FEDERAL EXPRESS

James Brown, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington DC, 20463

Re: MUR 3242
Mr. Frank J. McGuire
Kevin P. Gaughan For
Congress Committee
Our File #BC04343

Dear Mr. Brown:

As I indicated during our telephone conversation earlier today, your letter of August 6, 1991, a copy of which is attached, was received in our office on Friday, August 9, 1991 but was not opened by me until yesterday afternoon, since I was out of town on Friday and Monday.

Therefor, as we discussed, I am treating your letter, for purposes of the response time set forth therein, as having been received on Tuesday, August 13, 1991.

Additionally I would respectfully request that the normal 15 day response time set forth in your letter be extended by an additional 20 days since I will be out of the office for approximately one week at the end of August and Messrs. McGuire and Gaughan will only be available on a limited basis during the next two weeks because of pre-existing business and vacation related commitments.

Consequently I would appreciate your confirming that we will have 35 days (rather than 15 days) to respond to your August 6, 1991 letter. You may do this, if you so desire, by signing and returning the additional copy of this letter which I have provided

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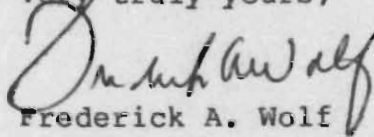
James Brown, Esq.
August 14, 1991
Page 2

for that purpose in the self addressed stamped envelope which I have enclosed for your convenience.

If for some reason you are unable to grant the extension which I have requested, I would appreciate your promptly advising us of this fact so that we can make every effort to comply with the original 15 day response time set forth in your correspondence.

In the interim, should you have any questions or comments, please contact me.

Very truly yours,


Frederick A. Wolf

FAW/ljj
Enclosure
cc: Mr. Frank J. McGuire
Kevin P. Gaughan, Esq.

92040921831



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 30, 1991

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486

RE: MUR 3242
-Mr. Frank J. McGuire
-Kevin P. Gaughan for Congress
Committee and William F. Matthews, Jr.,
as treasurer

Dear Mr. Wolf:

This is in response to your letter dated August 14, 1991, which we received on August 16, 1991, requesting an extension of 20 days to respond to Commission findings in the above cited matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on September 13, 1991.

If you have any questions, please contact James Brown, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa E. Klein", is written over the typed name.

Lisa E. Klein
Assistant General Counsel

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BRIAN D. KNAUTH

COUNSEL TO THE FIRM

HOWARD T. SAPERSTON, SR.
MORTON MENDELSON

September 11, 1991

FEDERAL EXPRESS

James Brown, Esq.
Office of General Counsel
Federal Election Commission
999 E Street NW
Washington DC 20463

Re: MUR 3242
Mr. Frank J. McGuire
Kevin P. Gaughan For
Congress Committee
BC04343

Dear Mr. Brown:

This correspondence is intended to respond to Chairman McGarry's letter of August 6, 1991, a copy of which is attached as Exhibit A.

Although Chairman McGarry's letter requested a response within 20 days of receipt, I have attached as Exhibit B a letter from Ms. Lisa E. Kline, Assistant General Counsel, extending the time period for our clients to respond to September 13, 1991.

Based upon the findings set forth in Chairman McGarry's letter, previous conversations with your office and extensive discussions with our respective clients, we wish to make the following comments and/or observations on behalf of both Mr. McGuire and The Kevin P. Gaughan for Congress Committee:

1. Since it now appears that there may be a conflict in our representing both The Kevin P. Gaughan for Congress Committee and Mr. Frank J. McGuire, we have notified Mr. Gaughan that we are withdrawing as counsel to The Kevin P. Gaughan for Congress Committee, a fact which we have also confirmed by a letter to both Kevin P. Gaughan and William F. Matthews, Jr., Treasurer of The Kevin P. Gaughan for

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OFFICE OF GENERAL COUNSEL

SAPERSTON & DAY, P.C.

James Brown, Esq.
September 11, 1991
Page 2

Congress Committee. It is our understanding that The Committee will respond independently to Chairman McGarry's August 6, 1991 letter within the time frame set forth Ms. Kline's correspondence.

2. Following a detailed review of Chairman McGarry's letter and the Factual and Legal Analysis attached thereto, our client, Mr. Frank J. McGuire, has expressed a desire to pursue pre-probable cause conciliation and has authorized us to request such pre-probable cause conciliation on his behalf. Consequently we ask that you consider this letter as a written request by Mr. McGuire to pursue pre-probable cause conciliation with the Commission.
3. In support of our client's request for pre-probable cause conciliation and either no or a very nominal civil sanction, we have attached as Exhibit C a letter from Manufacturers and Traders Trust Company date August 30, 1991 to The Kevin P. Gaughan for Congress Committee indicating that the \$10,000 loan which Mr. McGuire allegedly guaranteed on behalf of the Committee has now been paid in full. We have also attached as Exhibit D an affidavit from Mr. Gaughan indicating that neither The Committee nor our client intended to violate the Federal Election Campaign Act of 1971 as amended (the "Act").
4. We would ask that your office and the Commission in assessing, reviewing and considering what sanctions or penalties should be assessed against our client take notice of the fact that candidate Kevin P. Gaughan was a practicing lawyer, licensed in the State of New York and before various Federal courts. As such our client was entitled to rely and did rely upon Mr. Gaughan's representation that the actions which Mr. McGuire engaged in, with the blessings of Mr. Gaughan, his Committee and the highly regulated Manufacturers and Traders Trust Company, were permissible and legal under all Federal and state laws and regulations, including the Act.
5. The fact that Mr. McGuire's actions subsequently turned out to be prohibited by the Act places him in a position of considerable embarrassment since his good samaritan willingness to guaranty a loan for Mr. Gaughan's Committee (upon request from Mr. Gaughan) was based to a great extent upon his belief that Mr. Gaughan, his Committee and the lender (who has significant experience in the area of advancing

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SAPERSTON & DAY, P.C.

James Brown, Esq.
September 11, 1991
Page 3

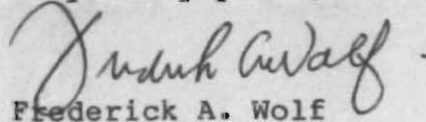
funds to political candidates and their committees) were aware of the law in this area and would not ask him to engage in an illegal act.

5. Mr. McGuire's desire to pursue and submit to the pre-probable cause conciliation is conditioned upon his understanding that the alleged violation does not constitute a criminal act and would give rise solely to civil sanctions.

I will await your conclusions regarding the ability of our client to submit to pre-probable cause conciliation and would encourage your office to recommend, and the Commission to consider, the ultimate assessment of either no fine or a minimal fine against Mr. McGuire under the circumstances.

Should you desire additional information to facilitate your further review of this matter, please contact me.

Very truly yours,


Frederick A. Wolf

FAW/ljj
Enclosures

cc: Mr. Frank J. McGuire
Kevin P. Gaughan, Esq.
William F. Matthews, Jr.

92040921835

EXHIBIT A



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 6, 1991

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486

RE: MUR 3242

-Mr. Frank J. McGuire
-Kevin P. Gaughan for Congress
Committee and William F. Matthews, Jr.,
as treasurer

Dear Mr. Wolf:

On April 3, 1991, the Federal Election Commission notified your clients, Mr. Frank J. McGuire, the Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., 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 you, the Commission, on July 31, 1991, found that there is reason to believe the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act. On that same date, the Commission found that there is reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A), also a provision of the Act. The Factual and Legal Analyses, which formed the bases for the Commission's findings, are attached for your information.

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

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

If you are interested in pursuing pre-probable cause

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MUR 3242
Frederick A. Wolf, Esq.
Page 2

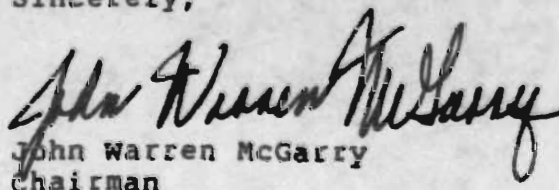
conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation 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 James Brown, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures
Factual & Legal Analyses (2)

92040921837

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Frank J. McGuire

MUR: 3242

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Such contributions are limited by the Act to not more than \$1,000 from any individual with respect to any election for Federal office.

2 U.S.C. § 441a(a)(1). Commission regulations define a "loan" as "a guarantee, endorsement, and any other form of security."

11 C.F.R. § 100.7(a)(1)(i). That same section of the Commission regulations goes on to provide that "[a] loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid."

11 C.F.R. § 100.7(a)(1)(i)(A). Section 441a(f) of the Act provides that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limits of Section 441a.

As part of the Kevin P. Gaughan for Congress Committee's reporting obligations, both the 1990 Post-General Election Report and the 1990 Year End Report reflect a loan guarantee made by Frank J. McGuire for \$10,000.

Respondents' counsel submits three alternative arguments in support of the position that the loan guarantee does not justify

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further action by the Commission. First, counsel argues that because the guarantee is prohibited under federal law, it is not legally binding upon McGuire, and should not be considered a contribution in excess of the limitations contained in the Act. Second, counsel asserts that due to full disclosure the Committee lacked any intent to evade the provisions of the Act, and thus no civil penalty should be assessed. Third, counsel contends that the Committee has mitigated the violation by reducing the outstanding obligation by \$5,000 and that it continues to reduce the debt, thus voluntarily "curing" the violation. As discussed below, each of these arguments fails to vitiate the original violation, and none obviates the need for Commission enforcement action.

Counsel for respondents relies upon the wording of the Commission regulations at Section 100.7(a)(1)(i)(C) to maintain that no violation has occurred because Mr. McGuire was never "liable" for greater than \$1,000 of the guarantee. Section 100.7(a)(1)(i)(C) states in part:

Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. . . .

Counsel cites several cases supporting the proposition that agreements against public policy and/or illegal agreements are void and unenforceable, even when a party to such an agreement is ignorant of the fact that it contravenes the law. Here

counsel points out that the bank was on notice that the debt was incurred by the Committee, and thus the bank should have known that the guarantee was in excess of the Act's contribution limits. Counsel then argues that because the guarantee was in violation of the statute, it was void and unenforceable, and as such Mr. McGuire "did not effectively agree to be liable . . . in excess of the contribution limitations of the FECA" Counsel's argument is circular and ignores the true emphasis of Section 100.7(a)(1)(i)(C), which is on the act of "agreeing to be liable." There is no question that Mr. McGuire agreed to be liable as a loan guarantor for an amount in excess of \$1,000, in violation of the Act and Commission regulations.

Therefore, there is reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kevin P. Gaughan for Congress and MUR: 3242
William F. Matthews, Jr., as treasurer

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). Such contributions are limited by the Act to not more than \$1,000 from any individual with respect to any election for Federal office.

2 U.S.C. § 441a(a)(1). Commission regulations define a "loan" as "a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.7(a)(1)(i). That same section of the Commission regulations goes on to provide that "[a] loan which exceeds the contribution limitations of 2 U.S.C. § 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid."

11 C.F.R. § 100.7(a)(1)(i)(A). Section 441a(f) of the Act provides that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limits of Section 441a.

As part of the Kevin P. Gaughan for Congress Committee's reporting obligations, both the 1990 Post-General Election Report and the 1990 Year End Report reflect a loan guarantee made by Frank J. McGuire for \$10,000.

Respondents' counsel submits three alternative arguments in support of the position that the loan guarantee does not justify

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further action by the Commission. First, counsel argues that because the guarantee is prohibited under federal law, it is not legally binding upon McGuire, and should not be considered a contribution in excess of the limitations contained in the Act. Second, counsel asserts that due to full disclosure the Committee lacked any intent to evade the provisions of the Act, and thus no civil penalty should be assessed. Third, counsel contends that the Committee has mitigated the violation by reducing the outstanding obligation by \$5,000 and that it continues to reduce the debt, thus voluntarily "curing" the violation. As discussed below, each of these arguments fails to vitiate the original violation, and none obviates the need for Commission enforcement action.

Counsel for respondents relies upon the wording of the Commission regulations at Section 100.7(a)(1)(i)(C) to maintain that no violation has occurred because Mr. McGuire was never "liable" for greater than \$1,000 of the guarantee. Section 100.7(a)(1)(i)(C) states in part:

Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. . . .

Counsel cites several cases supporting the proposition that agreements against public policy and/or illegal agreements are void and unenforceable, even when a party to such an agreement is ignorant of the fact that it contravenes the law. Here

counsel points out that the bank was on notice that the debt was incurred by the Committee, and thus the bank should have known that the guarantee was in excess of the Act's contribution limits. Counsel then argues that because the guarantee was in violation of the statute, it was void and unenforceable, and as such Mr. McGuire "did not effectively agree to be liable . . . in excess of the contribution limitations of the FECA" Counsel's argument is circular and ignores the true emphasis of Section 100.7(a)(1)(i)(C), which is on the act of "agreeing to be liable." There is no question that Mr. McGuire agreed to be liable as a loan guarantor for an amount in excess of \$1,000, in violation of the Act and Commission regulations.

Therefore, there is reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 30, 1991

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486

RE: MUR 3242
-Mr. Frank J. McGuire
-Kevin P. Gaughan for Congress
Committee and William F. Matthews, Jr.,
as treasurer

Dear Mr. Wolf:

This is in response to your letter dated August 14, 1991, which we received on August 16, 1991, requesting an extension of 20 days to respond to Commission findings in the above cited matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on September 13, 1991.

If you have any questions, please contact James Brown, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa E. Klein".

Lisa E. Klein
Assistant General Counsel

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EXHIBIT C

Manufacturers and Traders Trust Company
One M&T Plaza, Buffalo, New York 14203-2399
(716) 842-4200 Fax (716) 842-4426

Western New York Commercial Banking Department

August 30, 1991

Kevin P. Gaughan For Congress
4325 Lakeshore Road
Hamburg, NY 14075

RE: Loan Account #013512886/Note #0131675

Dear Mr. Gaughan:

As of today's date, the above referenced Demand Loan, in the original principal amount of \$10,000, to Kevin Gaughan For Congress has been paid in full.

In approximately two weeks, the original Demand Note, stamped paid, will be returned to your attention.

Thank you.

Very truly yours,

MANUFACTURERS AND TRADERS TRUST COMPANY

Anne E. Brovitz
Anne E. Brovitz
Banking Officer

AEB:st

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FEDERAL ELECTION COMMISSION

**NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE**

Complainant

**KEVIN P. GAUGHAN FOR
CONGRESS COMMITTEE**

AFFIDAVIT

MUR 3242

Respondent

STATE OF NEW YORK)

COUNTY OF ERIE)

KEVIN P. GAUGHAN, being duly sworn, deposes and says:

1. The Kevin P. Gaughan for Congress Committee (the "Committee"), respondent in this matter, was formed for the purpose of raising funds for my campaign for the United States Congress, 31st District, State of New York, in accordance with the Federal Election Campaign Act of 1971, as amended (the "Act").
2. On or about November 1, 1990, the Committee borrowed \$10,000 from M & T Bank, as evidenced by Promissory Note No. 0131675 (the "Note"). Payment of the Note was guaranteed by Mr. Frank J. McGuire.
3. At the time of the complaint filed by the National Republican Congressional Committee, the indebtedness of the Committee as evidenced by the Note was paid down to \$5,000.
4. As of the date hereof, the indebtedness evidenced by the Note has been discharged in its entirety. (See Exhibit A attached hereto.)
5. At the time of the execution of the Note, both the Committee and I believed that the financial arrangement as structured, including

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guarantee of the Note by Mr. McGuire, complied with the Act.

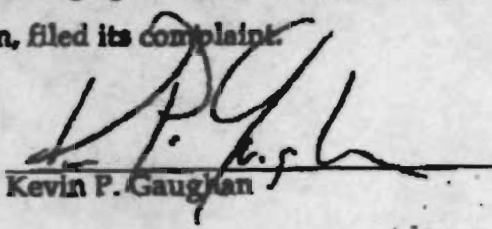
6. Accordingly, neither the Committee nor I ever advised Mr. McGuire with respect to the Act or its potential application to this financial arrangement, or that his guarantee of the Note would constitute an alleged violation of the Act.

7. To the best of my knowledge, Mr. McGuire possessed no knowledge that his guarantee of the Note would constitute an alleged violation of the Act or the rules and regulations promulgated thereunder.

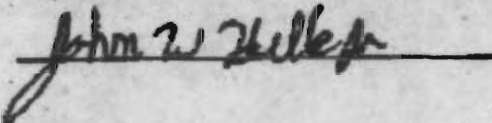
8. In accordance with reporting requirements set forth in the Act, the Committee disclosed to the Federal Election Commission ("FEC" or the "Commission") a) the Note, and b) its guarantee by Mr. McGuire in each of the 1990 Post-General Election Report and the 1990 Year End Report.

9. On or about December 4, 1990, Mr. Kevin Kevin R. Salley, Reports Analyst with the FEC, spoke with me in an informal telephone conversation. He advised me of the existence of Sections 431(8)(A)(i) and 441a(a)(1) of the Act. Mr. Salley stated that the Committee may be in violation of these provisions. I advised Mr. Salley that a) the Note had been paid down to \$5,000 and b) I intended to discharge the balance of the indebtedness as soon as possible. Mr. Salley then stated that he felt that the Commission would take no action with respect to this matter so long as the Committee discharged the indebtedness.

10. The Commission took no action until such time as the National Republican Congressional Committee, acting upon instructions from my former opponent, Mr. L. William Paxon, filed its complaint.


Kevin P. Gaughan

Subscribed and sworn to before
me this 30th day of August, 1991.



JOHN W. HILLE, JR. 4962712
Notary Public, State of New York
Qualified in Collateral County
My Commission Expires 2/28/92

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KEVIN P. GAUGHAN

ATTORNEY AT LAW

4325 LAKE SHORE ROAD

HAMBURG, NEW YORK 14075

716-627-4883

September 12, 1991

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MAIN COPY ROOM

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VIA FEDERAL EXPRESS

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

Re: MUR 3242
Kevin P. Gaughan for Congress Committee
and William F. Matthews, Jr.,
as treasurer (the "Committee")

Dear Mr. Brown:

This letter, along with each exhibit attached hereto, shall serve as the response of the Committee to Chairman John Warren McGarry's letter dated August 6, 1991.

Chairman McGarry's letter, a copy of which is attached hereto as Exhibit A, was addressed to Saperston & Day, a firm that served as counsel to each of the Committee and Mr. Frank J. McGuire. As of September 11, 1991, Saperston & Day withdrew as counsel to the Committee so as to avoid any potential conflict of interest or appearance of such conflict of interest. Accordingly, the Committee has authorized me to represent its interest in this matter.

Based upon the finding set forth in Chairman McGarry's letter, detailed discussion of such findings with William F. Matthews, Jr., treasurer of the Committee, and previous telephone conferences with your office, the Committee has expressed a desire to pursue pre-probable cause conciliation. Kindly consider this letter as written request by the Committee to pursue pre-probable cause conciliation with the Federal Election Commission (the "Commission" or the "FEC").

In support of the Committee's request for pre-probable cause conciliation and either no or nominal civil sanction, I wish to make the following comments and observations:

1. As of August 30, 1991, the indebtedness evidenced by Promissory Note No. 0131675 dated November 1, 1990, executed by myself on behalf of the Committee and guaranteed by Mr. Frank J. McGuire, had been discharged in its entirety (please see letter dated August 30, 1991 from Manufacturers Trust Company to the Committee attached hereto as Exhibit B.)

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OFFICE OF GENERAL COUNSEL
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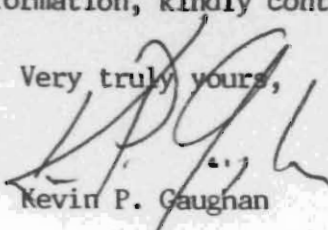
James Brown, Esq.
September 12, 1991
Page Two

2. I attach herewith as Exhibit C an executed, acknowledged affidavit of myself stating, among other things, that a) the Committee had no knowledge that this transaction would violate a regulation promulgated under the Federal Election Campaign Act of 1971, as amended, and thus lacked any intent to commit a violation; b) the Committee disclosed this transaction in accordance with both the intent and underlying spirit of FEC rules; in several telephone conversations with FEC staff members immediately after consummation of the transaction, no indication was given to the Committee that the FEC would take action with respect to the transaction; and c) no action was taken until such time that the Republican National Congressional Committee, acting upon instruction of my former opponent, filed a complaint, and at which time the Committee's indebtedness was \$5,000.
3. I would respectfully request that your office and the Commission, in assessing, reviewing, and considering what sanctions or penalties should be assessed against the Committee, take notice of the facts and comments set forth herein.

I shall await your conclusion with respect to the ability of the Committee to submit to pre-probable cause conciliation and respectfully encourage your office to recommend, and the Commission to consider, an ultimate assesment of either no fine or a minimal fine against the Committee under the circumstances.

If you have any questions or comments with regard to any of the foregoing, or desire additional information, kindly contact me.

Very truly yours,


Kevin P. Gaughan

KPG/jw
Att.

CC: William F. Matthews, Jr.
Frederick A. Wolf, Esq.
Mr. Frank J. McGuire

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1991

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, New York 14203-1486

RE: MUR 3242
-Mr. Frank J. McGuire
-Kevin P. Gaughan for Congress
Committee and William F. Matthews, Jr.,
as treasurer

Dear Mr. Wolf:

On April 3, 1991, the Federal Election Commission notified your clients, Mr. Frank J. McGuire, the Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., 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 you, the Commission, on July 31, 1991, found that there is reason to believe the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act. On that same date, the Commission found that there is reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A), also a provision of the Act. The Factual and Legal Analyses, which formed the bases for the Commission's findings, are attached for your information.

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

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

If you are interested in pursuing pre-probable cause

EXHIBIT A

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MUR 3242

Frederick A. Wolf, Esq.

Page 2

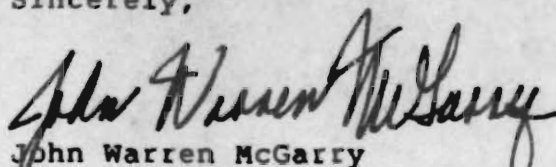
conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation 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 James Brown, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures

Factual & Legal Analyses (2)

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EXHIBIT B

Manufacturers and Traders Trust Company
One M&T Plaza, Buffalo, New York 14203-2399
(716) 842-4200 Fax (716) 842-4426

Western New York Commercial Banking Department

August 30, 1991

Kevin P. Gaughan For Congress
4325 Lakeshore Road
Hamburg, NY 14075

RE: Loan Account #013512886/Note #0131675

Dear Mr. Gaughan:

As of today's date, the above referenced Demand Loan, in the original principal amount of \$10,000, to Kevin Gaughan For Congress has been paid in full.

In approximately two weeks, the original Demand Note, stamped paid, will be returned to your attention.

Thank you.

Very truly yours,

MANUFACTURERS AND TRADERS TRUST COMPANY


Anne E. Brovitz
Banking Officer

AEB:st

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FEDERAL ELECTION COMMISSION

NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE

Complainant

KEVIN P. GAUGHAN FOR
CONGRESS COMMITTEE

AFFIDAVIT

MUR 3242

Respondent

STATE OF NEW YORK)

COUNTY OF ERIE)

KEVIN P. GAUGHAN, being duly sworn, deposes and says:

1. The Kevin P. Gaughan for Congress Committee (the "Committee"), respondent in this matter, was formed for the purpose of raising funds for my campaign for the United States Congress, 31st District, State of New York, in accordance with the Federal Election Campaign Act of 1971, as amended (the "Act").

2. On or about November 1, 1990, the Committee borrowed \$10,000 from M & T Bank, as evidenced by Promissory Note No. 0131675 (the "Note"). Payment of the Note was guaranteed by Mr. Frank J. McGuire.

3. At the time of the complaint filed by the National Republican Congressional Committee, the indebtedness of the Committee as evidenced by the Note was paid down to \$5,000.

4. As of the date hereof, the indebtedness evidenced by the Note has been discharged in its entirety. (See Exhibit A attached hereto.)

5. At the time of the execution of the Note, both the Committee and I believed that the financial arrangement as structured, including

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guarantee of the Note by Mr. McGuire, complied with the Act.

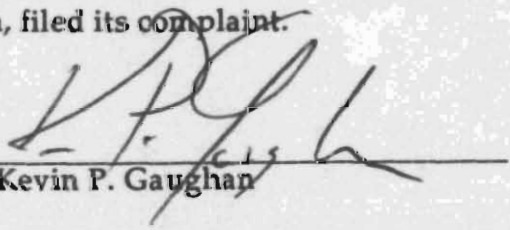
6. Accordingly, neither the Committee nor I ever advised Mr. McGuire with respect to the Act or its potential application to this financial arrangement, or that his guarantee of the Note would constitute an alleged violation of the Act.

7. To the best of my knowledge, Mr. McGuire possessed no knowledge that his guarantee of the Note would constitute an alleged violation of the Act or the rules and regulations promulgated thereunder.

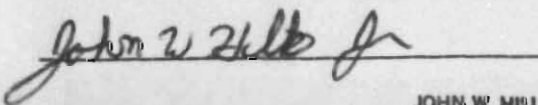
8. In accordance with reporting requirements set forth in the Act, the Committee disclosed to the Federal Election Commission ("FEC" or the "Commission") a) the Note, and b) its guarantee by Mr. McGuire in each of the 1990 Post-General Election Report and the 1990 Year End Report.

9. On or about December 4, 1990, Mr. Kevin Kevin R. Salley, Reports Analyst with the FEC, spoke with me in an informal telephone conversation. He advised me of the existence of Sections 431(8)(A)(i) and 441a(a)(1) of the Act. Mr. Salley stated that the Committee may be in violation of these provisions. I advised Mr. Salley that a) the Note had been paid down to \$5,000 and b) I intended to discharge the balance of the indebtedness as soon as possible. Mr. Salley then stated that he felt that the Commission would take no action with respect to this matter so long as the Committee discharged the indebtedness.

10. The Commission took no action until such time as the National Republican Congressional Committee, acting upon instructions from my former opponent, Mr. L. William Paxon, filed its complaint.


Kevin P. Gaughan

Subscribed and sworn to before
me this 16th day of September, 1991.



JOHN W. HILLS, JR. 4962712
Notary Public, State of New York
Qualified in Catteraugus County
My Commission Expires 2/16/92

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3242
Kevin P. Gaughan for Congress)
Committee and William F.)
Matthews, Jr., as treasurer)
)
Frank J. McGuire)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 31, 1991, the Commission found reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer ("the Committee"), violated 2 U.S.C. § 441a(f) by accepting an excessive contribution made in the form of a \$10,000 joint loan guarantee by the candidate and Frank J. McGuire. On that same date, the Commission found reason to believe that Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A) for making an excessive contribution as a result of that loan guarantee.

The Office of the General Counsel has subsequently received responses from Kevin P. Gaughan and counsel for Frank J. McGuire. In these communications each respondent requests pre-probable cause conciliation.

II. ANALYSIS

Neither respondent in this matter denies violating the Federal Election Campaign Act of 1971, as amended ("the Act"), but rather each asserts certain factors mitigate their respective violations. In the response filed on behalf of Frank J. McGuire, Counsel asks no civil penalty or a minimal penalty

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be assessed based on the following: Mr. McGuire believed the candidate would not ask him to engage in an illegal act and thus Mr. McGuire had no intent to violate the Act; and the guaranteed loan has now been paid in full. See Attachment I. The loan repayment is confirmed by Counsel's submission of a letter from Manufacturers and Traders Trust Company to the Committee indicating that the \$10,000 loan has now been paid in full. See Attachment I at 13. Regarding Mr. McGuire's intent, counsel posits that Mr. McGuire was entitled to rely upon Mr. Gaughan because he is a licensed and practicing attorney in the State of New York with apparent experience in campaign funding.¹ Counsel claims his client's reliance was further bolstered by the willingness of the highly regulated Manufacturers and Traders Trust Company to enter into this loan guarantee.

Mr. Gaughan asserts in his response that the loan in question has been repaid; that neither he nor the Committee had any intent to violate the Act; that the Committee fully disclosed this transaction; and that he was told by the Commission's Reports Analysis Division ("RAD") that the Commission would take no action so long as the Committee

1. Counsel suggests his client actually relied on Mr. Gaughan's affirmative representations that the loan guarantee in question was permissible and legal. However, Mr. Gaughan avers in an affidavit attached to the McGuire Response that neither the Committee nor Mr. Gaughan advised Mr. McGuire regarding the Act or the rules and regulations promulgated thereunder. Attachment I at 15. Mr. Gaughan does aver that to the best of his knowledge Mr. McGuire did not know that the loan guarantee might constitute a violation of the Act. Id.

discharged the indebtedness.² Mr. Gaughan asserts that these factors justify the imposition of no or minimal civil penalty being levied upon the Committee. Mr. Gaughan avers in his affidavit that at the time of the loan he and the Committee believed the loan arrangements complied with the Act.

Attachment II at 6 - 7. The Gaughan Response further posits that the Committee's desire to act in accordance with the intent and underlying spirit of the Act is displayed by its disclosure of the loan and the guarantors on the Committee's 1990 Post-General and 1990 Year End Report.

The Committee's 1990 Year End Report shows that the Committee did in fact pay off \$5,000 on the loan in question prior to December 31, 1990, which is within the 60 day period established at 11 C.F.R. § 103.3(b)(3). The remaining \$5,000 portion was still jointly guaranteed with the candidate; Mr. McGuire therefore guaranteed \$2,500. Commission contributor records indicate that Mr. McGuire contributed an additional \$250 toward the general election campaign of Kevin P. Gaughan. When this \$250 contribution is combined with the \$2,500 loan guarantee, the result is that Mr. McGuire exceeded the \$1,000 contribution limit by \$1,750.

2. The RAD staff person involved confirms the conversation with Mr. Gaughan, but notes that this conversation preceded the filing of the complaint in this matter and was based upon the understanding that the Committee had already paid off \$5,000 of the jointly guaranteed \$10,000 loan.

92040921857

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

III. RECOMMENDATIONS

1. Enter into conciliation with the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer prior to a finding of probable cause to believe.
2. Enter into conciliation with Frank J. McGuire prior to a finding of probable cause to believe.
3. Approve the attached proposed conciliation agreements and the appropriate letters.

Lawrence M. Noble
General Counsel

12-12-91
Date

BY:


Lois G. Lerner
Associate General Counsel

Attachments

- I. McGuire Request for conciliation
- II. Gaughan Request for conciliation
- III. Proposed Conciliation Agreements (2)

Staff assigned: J. Albert Brown

92040921858



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20541

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. FAISON *[Signature]*
COMMISSION SECRETARY

DATE: DECEMBER 19, 1991

SUBJECT: MUR 3242 - GENERAL COUNSEL'S REPORT
DATED DECEMBER 12, 1991.

The above-captioned document was circulated to the
Commission on Tuesday, Dec. 17, 1991 at 11:00 a.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	_____XXX_____

This matter will be placed on the meeting agenda
for Tuesday, January 7, 1992.

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

92040921859

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3242
Kevin P. Gaughan for Congress)
Committee and William F. Matthews,)
Jr., as treasurer;)
Frank J. McGuire.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 7, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3242:

1. Enter into conciliation with the Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., as treasurer, prior to a finding of probable cause to believe.
2. Enter into conciliation with Frank J. McGuire prior to a finding of probable cause to believe.

(continued)

92040921860

3. Approve the proposed conciliation agreements and the appropriate letters as recommended in the General Counsel's report dated December 12, 1991,

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

Attest:

1-10-92
Date

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

92040921861



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 16, 1992

Frederick A. Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, N.Y. 14203-1486

RE: MUR 3242
Frank J. McGuire

Dear Mr. Wolf:

On July 31, 1991, the Federal Election Commission found reason to believe that Mr. Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A). At your request, on January 7, 1992, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

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

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3400.

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

92040921862



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 16, 1992

Kevin P. Gaughan, Esq.
4325 Lake Shore Road
Hamburg, N.Y. 14075

RE: MUR 3242
Kevin P. Gaughan for
Congress Committee and
William F. Matthews, Jr.,
as treasurer

Dear Mr. Gaughan:

On July 31, 1991, the Federal Election Commission found reason to believe that Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., as treasurer, violated 2 U.S.C. § 441a(f). At your request, on January 7, 1992, 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.

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 me at (202) 219-3400.

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

92040921863

STATEMENT OF DESIGNATION OF COUNSELMUR 3242

NAME OF COUNSEL:

John M. Gerson

ADDRESS:

Albrecht, Maguire, et al.2100 Empire TowerBuffalo NY 14202

TELEPHONE:

716-853-1521

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.

Feb 24, 1992
Date[Signature]
Signature

RESPONDENT'S NAME:

Kevin P. Gaughan Et.

ADDRESS:

4325 Kalamazoo Rd.Hamburg NY 14075

HOME PHONE:

(716) 627-4023

BUSINESS PHONE:

(716) 858-7506

92040921864

BEFORE THE FEDERAL ELECTION COMMISSION

7-5 PM 2:57

In the Matter of)
Kevin P. Gaughan for Congress)
Committee and William F. Matthews)
Jr., as treasurer)
Frank J. McGuire)

MUR 3242

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 31, 1991, the Commission found reason to believe that Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer ("the Committee"), violated 2 U.S.C. § 441a(f) by accepting an excessive contribution of \$9,250, consisting of a direct contribution and a \$10,000 loan guarantee by Frank J. McGuire. On the same date, the Commission found reason to believe that Mr. McGuire violated 2 U.S.C. § 441a(a)(1)(A) for making an excessive contribution. On January 7, 1992, the Commission decided to enter in conciliation with both Respondents prior to a finding of probable cause to believe.

II. ANALYSIS

A. Conciliation Agreement with Committee

92040921865

92040921866

B. Conciliation Agreement with Contributor

92040921867

92040921868

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, and close the file with respect to them.
- 2.

3.

4. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 5/5/92

BY:

[Signature]
Lois G. Lerner
Associate General Counsel

Attachments

1. Committee's signed conciliation agreement.
2. McGuire's counterproposal and check.
3. New counteroffer to McGuire.

Staff Person: Dawn M. Odrowski

92040921869



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: MAY 11, 1992

SUBJECT: MUR 3242 - GENERAL COUNSEL'S REPORT
DATED MAY 5, 1992

The above-captioned document was circulated to the
Commission on WEDNESDAY, MAY 6, 1992 at 4:00 p.m.

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

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u> </u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda
for TUESDAY, MAY 19, 1992

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

92040921870

KEVIN P. GAUGHAN

RECEIVED
FEDERAL ELECTION
COMMISSION

MAY 19 10 36 AM '92

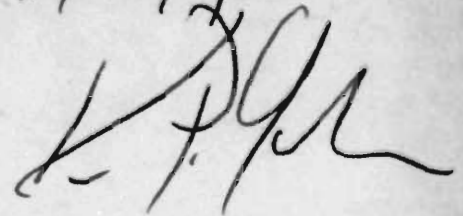
May 15, 1992

Re: MUR

Dear Mr. Odrowski,

I enclose herewith a check in the
amount of \$750.00 in connection with the
captioned matter.

Very Truly Yours,



92 MAY 20 AM 10:59

FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

92040921871

KEVIN P. GAUGHAN
4325 LAKESHORE RD.
HAMBURG, NY 14075

0921872

189

10-27220

May 15, 1992

PAY TO THE
ORDER OF

FEDERAL ELECTRON COMMISSION

\$ 1750.00

Seven hundred fifty dollars and 00/100

DOLLARS



WANAKAH OFFICE
MARINE MIDLAND BANK, N.A.
5-4939 LAKE SHORE ROAD
HAMBURG, NEW YORK 14075

[Signature]

FOR
Mem # 3242

⑆022000020⑆805749900⑆0189

⑆1000⑆100⑆



National Republican Congressional Committee

Guy Vander Jagt, M.C.
Chairman

Spencer Abraham
Co-Chairman

Tom Cole
Executive Director

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAY 20 11 34 AM '92

May 12, 1992

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

RE: MUR 3242

Dear Ms. Lerner:

On March 26, 1991, the National Republican Congressional Committee filed a complaint alleging certain violations of the federal election law concerning contributions in the form of loans by the Kevin P. Gaughan For Congress Committee. Receipt of the complaint was acknowledged by the Commission on April 3, 1991.

Prior to the filing, the Reports Analysis Division, through its normal compliance review process, notified the Gaughan Committee that review of its 30 Day Post-General Report raised questions concerning certain information. The report and the response filed by the Gaughan For Congress Committee indicate unequivocally that the Gaughan Committee has received an excessive contribution in the form of a loan guarantee for \$10,000.00.

The Commission, pursuant to 2 U.S.C. §437(g)(a)(8)(A) is required to complete action on pending complaints within 120 days of filing. Inasmuch as documentation is on file with the Commission indicating that reporting violations have occurred, and over a year has elapsed, the Commission is urged to render a final decision on this matter.

Sincerely,

Mark Pischea
Deputy Executive Director

RECEIVED
FEDERAL ELECTION COMMISSION
MAY 20 PM 3:15

92040921873



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1992

Mr. Mike Pischea
Deputy Executive Director
National Republican Congressional
Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 3242

Dear Mr. Pischea:

This is in response to your letter dated May 12, 1992, in which you urge the Commission to take final action on the complaint filed by the National Republican Congressional Committee ("NRCC") on March 26, 1991.

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits any person from making public the fact of any notification or investigation by the Commission, prior to closing the entire file in the matter, unless the parties being investigated have agreed in writing that the matter be made public. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A). Because there have been no written agreements that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter dated April 3, 1991, please be assured that we will notify you as soon as the Commission takes final action on your complaint.

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

92040921874

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3242
Kevin P. Gaughan for Congress Committee)
and William F. Matthews, Jr., as)
treasurer;)
Frank J. McGuire.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on May 19,
1992, do hereby certify that the Commission took the
following actions in MUR 3242:

1. Failed in a vote of 3-3 to pass a motion to
 - a) Accept the conciliation agreement with Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., as treasurer, and close the file with respect to them.
 - b)
 - c)
 - d) Close the file.
 - e) Direct the Office of General Counsel to send appropriate letters pursuant to the actions noted above.

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

(continued)

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2. Decided by a vote of 6-0 to take the following actions in MUR 3242:
- a) Accept the conciliation agreement with Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., as treasurer, and close the file with respect to them.
 - b)
 - c)
 - d) Approve the appropriate letters as recommended in the General Counsel's report dated May 5, 1992.

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

Attest:

5-21-92

Date

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

92040921876

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Kevin P. Gaughan for Congress) MUR 3242
Committee and William F.)
Matthews Jr., as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Charles Leonard, as Political Director of the National Republican Congressional Committee. The Federal Election Commission ("Commission") found reason to believe that the Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, ("Respondents") violated 2 U.S.C. § 441a(f).

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.

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

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

1. The Kevin P. Gaughan for Congress Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

2. William F. Matthews Jr. is the treasurer of the Kevin P. Gaughan for Congress Committee.

3. Pursuant to 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate or his or her authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

4. Pursuant to 2 U.S.C. § 431(8)(A)(i), a contribution is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."

5. Commission regulations at 11 C.F.R. § 100.7(a)(1)(i) define a "loan" as "a guarantee, endorsement, and any other form of security."

6. Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution in excess of the limitations imposed by 2 U.S.C. § 441a(a)(1).

7. Pursuant to 11 C.F.R. § 103.3(b)(3) the treasurer of a candidate's authorized political committee must refund, redesignate, or reattribute excessive contributions within sixty (60) days from the date of receipt.

92040921878

8. In addition to a cash contribution of \$250, Respondents accepted \$10,000 from Frank J. McGuire through a loan guarantee.

9. Respondents repaid the loan as follows: (1) payments of \$5,091.67 were made prior to December 31, 1990 and (2) the remainder of the loan was paid on or about August 30, 1991.

V. Respondents accepted an excessive contribution in the amount of \$9,250 from Frank J. McGuire, in violation of 2 U.S.C. § 441a(f). Respondents contend the violation was not knowing and willful.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Thousand Eight Hundred Dollars (\$1,800), pursuant to 2 U.S.C. § 437g(a)(5)(A), such penalty to be paid as follows:

1. One initial payment of \$750 due on May 15, 1992;
2. Thereafter, beginning on June 1, 1992, three (3) consecutive monthly installment payments of three hundred fifty dollars (\$350) each;
3. Each such installment shall be paid on or before the first day of the month it becomes due;
4. In the event that any installment payment is not received by the Commission by the fifth day of the month in which it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

92040921879

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 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,

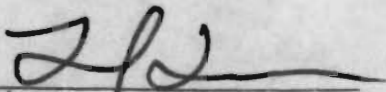
92040921880

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

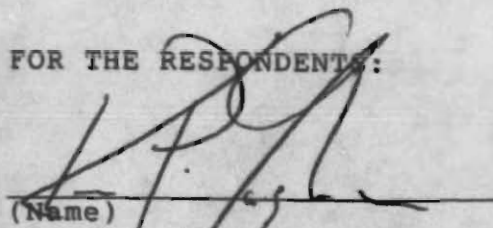
BY:


Lois G. Lerner
Associate General Counsel

Date

6-1-92

FOR THE RESPONDENTS:


(Name)
(Position) Kevin P. GAUGHAN

Date

April 14, 1992

92040921881



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 2, 1992

John M. Curran, Esq.
Albrecht, MaGuire, Heffern & Gregg, P.C.
2100 Empire Tower
Buffalo, New York 14202-3783

RE: MUR 3242
Kevin P. Gaughan for
Congress Committee and
William F. Matthews, Jr.,
as treasurer

Dear Mr. Curran:

On May 19, 1992, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer, in settlement of a violation of 2 U.S.C. § 441a(f), 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.

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 respondents 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.

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. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

92040921882

John Curran, Esq.
Page 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the second installment of the civil penalty is due on or before June 1, 1992, and the remaining two payments are due on or before the first of July and August, respectively. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

92040921883

MARINE MIDLAND PAYMENT SERVICES, INC.

No. W 0343316

**PERSONAL
MONEY
ORDER**

PAY TO THE
ORDER OF

DATE OF ISSUE

265/

$$\frac{10.2}{220}$$

FEDERAL ELECTION COMMISSION

35041500ct



PAYABLE THROUGH
MARINE MIDLAND BANK, N.A.

REF: MUR No. 3242

MONEY ORDER VOID AFTER ONE YEAR FROM DATE OF ISSUE
NOT VALID OVER \$1,000.00

SIGNATURE _____

4325 Lake Shore Road Hickory N.Y.

14/07/

[illegible]

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
92 JUN 30 AM 11:01

FRANK J. McGUIRE
1827 SENECA
BUFFALO, NY

Met Bank
Manufacturers and
Traders Corporation
44001 Stevenson Drive
Buffalo, NY 14220

No 8685

1/29 19 92

24002

PAY 1000.00 DOLLARS \$ 1000.00

Federal Election Commission

TO
THE
ORDER
OF

[Handwritten signature]

FRANK J. McGUIRE
BUFFALO, NY 14210

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

920409218852.29.92

DATE	DESCRIPTION	AMOUNT
		1000.00

FRANK J. McGUIRE
1627 SENECA ST.
BUFFALO, NY 14216

 **Met Bank**
Manufacturers And Traders Trust Company
Abbott Stevenson Office - Buffalo, NY 14220

No 9148

6.16. 19 92

10-4/228

PAY

The sum of 800 and 00/100ths

DOLLARS \$ 800.00

TO
THE
ORDER
OF

Federal Election Commission

98812604026

Frank J. McGuire

RECEIVED
F.E.C.

BEFORE THE FEDERAL ELECTION COMMISSION

22 JUL -9 PM 5:20

SENSITIVE

In the Matter of)
Kevin P. Gaughan for Congress)
Committee and William F. Matthews)
Jr., as treasurer)
Frank J. McGuire)

MUR 3242

GENERAL COUNSEL'S REPORT

I. DISCUSSION

Attached is a conciliation agreement which has been signed by Frederick A. Wolfe, counsel for Respondent Frank J. McGuire. Attachment 1 at 3-5. Mr. McGuire made an excessive contribution of \$9,250 to the Kevin P. Gaughan for Congress Committee ("the Committee") consisting of a direct contribution and a \$10,000 loan guarantee.

Respondent has sent two checks totaling \$1,800 in full payment of the civil penalty. Attachment 1 at 6-9.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Frank J. McGuire.

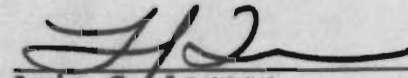
92040921887

2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/8/92

BY:


Lois G. Lerner
Associate General Counsel

Attachment

1. Conciliation Agreement and civil penalty checks

Staff assigned: Dawn M. Odrowski

92040921888

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Kevin P. Gaughan for Congress) MUR 3242
Committee and William F. Matthews, Jr.,)
as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 14, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3242:

1. Accept the conciliation agreement with Frank J. McGuire, as recommended in the General Counsel's Report dated July 8, 1992.
2. Close the file.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 8, 1992.

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

Attest:

7-14-92
Date

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

Received in the Secretariat: Thurs., July 09, 1992 5:29 p.m.
Circulated to the Commission: Fri., July 10, 1992 11:00 a.m.
Deadline for vote: Wed., July 15, 1992 4:00 p.m.

bjr

92040921889



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 16, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Charles Leonard, Political Director
National Republican Congressional Committee
320 First St., S.E.
Washington D.C. 20003

RE: MUJR 3242

Dear Mr. Leonard:

This is in reference to the complaint you filed with the Federal Election Commission on March 26, 1991, concerning receipt of an excessive contribution by Kevin P. Gaughan for Congress Committee and William F. Matthews Jr., as treasurer ("the Committee"), in the form of a loan guarantee by Frank J. McGuire.

The Commission found that there was reason to believe the Committee violated 2 U.S.C. § 441a(f) and Frank J. McGuire violated 2 U.S.C. § 441a(a)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter. Conciliation agreements signed by the Committee and Mr. McGuire were accepted by the Commission on May 19, 1992 and July 14, 1992, respectively. Accordingly, the Commission closed the file in this matter on July 14, 1992. Copies of these agreements are enclosed for your information.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Enclosures

Conciliation Agreements (2)

cc: (w/o enclosures)

Mark Pischea, Deputy Executive Director
NRCC

92040921890



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1992

John M. Curran, Esq.
Albrecht, MaGuire, Heffern & Gregg, P.C.
2100 Empire Tower
Buffalo, New York 14202-3783

RE: MUR 3242
Kevin P. Gaughan for
Congress Committee and
William F. Matthews, Jr.,
as treasurer

Dear Mr. Curran:

This is to advise you that this entire matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1992

CLOSED

Frederick Wolf, Esq.
Saperston & Day, P.C.
Goldome Center
One Fountain Plaza
Buffalo, N.Y. 14203-1486

RE: MUR 3242
Frank J. McGuire

Dear Mr. Wolf:

On July 14, 1992, 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. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

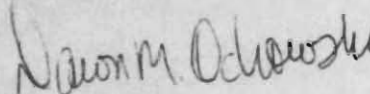
Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Frederick Wolf, Esq.
Page 2

Enclosed you will find two copies of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,



Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3242
Frank J. McGuire)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Charles Leonard, as Political Director of the National Republican Congressional Committee. The Federal Election Commission ("Commission") found reason to believe that Frank J. McGuire, ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondent, 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 Respondent 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. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Frank J. McGuire is a person within the meaning of 2 U.S.C. § 431(11).

2. Pursuant to 2 U.S.C. § 441a(a)(1), no person shall make contributions to any candidate or his or her authorized political

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committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

3. Pursuant to 2 U.S.C. § 431(8)(A)(i), a contribution is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."

4. Commission regulations at 11 C.F.R. § 100.7(a)(1)(i) define a "loan" as "a guarantee, endorsement, and any other form of security."

5. Pursuant to 11 C.F.R. § 103.3(b)(3) the treasurer of a candidate's authorized political committee must refund, redesignate, or reattribute excessive contributions within sixty (60) days from the date of receipt.

6. In addition to a cash contribution of \$250, Respondent contributed \$10,000 to the Kevin P. Gaughan for Congress Committee general election campaign through a loan guarantee.

V. Respondent made an excessive contribution in the amount of \$9,250 toward influencing an election for Federal office, in violation of 2 U.S.C. § 441a(a)(1)(A). Respondent contends the violation was not knowing and willful.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of one thousand eight hundred dollars (\$1,800), 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

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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. Respondent 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

BY:

Lois G. Lerner
Associate General Counsel

Date

7/16/92

FOR THE RESPONDENT:

Fredrick A. Wolf
(Name) FREDERICK A. WOLF
(Position) ATTORNEY FOR RESPONDENT

Date

June 25, 1992

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3242

DATE FILMED 8/12/92 CAMERA NO. 4

CAMERAMAN EES

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

☒ Microfilm
☐ Public Records
☐ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3242.

9/10/92

92040923819

CLOSED

OGC 6546
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

92 SEP -8 AM 11:34



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 4, 1992

TWO WAY MEMORANDUM

TO: Virginia Whitted
OGC, Docket

FROM: Philomena Brooks
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Kevin P Gaughan, check number 127, dated August 27, 1992, and in the amount of \$ 350.00. 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: Virginia Whitted
OGC, Docket

In reference to the above check in the amount of \$ 350.00, the MUR number is 3142 and in the name of KEVIN P. GAUGHAN FOR CONGRESS CMTE.. The account into which it should be deposited is indicated below:

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

☒ Civil Penalties Account, 95-1099.160

☐ Other: _____

Virginia Whitted
Signature

09/09/92
Date

92040923820

92040923821

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
92 SEP -8 AM 11:47

KEVIN P. GAUGHAN 7-92
4325 LAKE SHORE RD.
HAMBURG, NY 14075

127
10-83/220

August 27, 1992

PAY TO THE ORDER OF FEDERAL ELECTION COMMISSION \$ 350.00
Three hundred fifty dollars and 00/100 DOLLARS



Key Bank of New York
50 Fountain Plaza
Buffalo, NY 14202
Fountain Plaza Office

701

MEMO MUR 3242

[Signature]



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

☒ Microfilm
☐ Public Records
☐ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3242.

8/31/92

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MUR 3242

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

KEVIN P. GAUGHAN

ATTORNEY AT LAW

4325 LAKE SHORE ROAD

HAMBURG, NEW YORK 14075

716-627-8883

4023

JUL 15 1 31 PM '92

July 13, 1992

Dear Dan,

I enclose the July 1, 1992

payment of \$ 350.00.

Kindly advise either myself or
counsel to the Committee when this matter
shall reach final disposition.

Thanks very much.

[Signature]

92 JUL 17 PM 3:30

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 JUL 15 PM 3:25

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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92 JUL 15 PM 5:10

RECEIVED
FEDERAL ELECTION COMMISSION
ACCOUNTING OFFICE

92 JUL 17 PM 3:30


$$\frac{10-12}{220}$$

Date July 13 1992

Amount

FEDERAL ELECTION COMMISSION

Purchaser's Signature

4325 Lake Shore Road
Address Hazenbury, N.Y. 14075

11 4 7 4 4 5 2 2 11 1:0 2 2 0 0 0 1 2 7 1:

00 24 00 00 711

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 17, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE
92 JUL 17 PM 3:30

TWO WAY MEMORANDUM

TO: Virginia Whitted
OGC, Docket

FROM: Philomena Brooks
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a MO. from Kevin P Gaughan
check number 4744522, dated
7-13-92, and in the amount of \$ 350.00.
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: Virginia Whitted
OGC, Docket

In reference to the above check in the amount of
\$ 350.00, the MUR number is 3242 and in the name of
KEVIN P. GAUGHAN FOR CONGRESS COMMITTEE. The account into
which it should be deposited is indicated below:

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

— Civil Penalties Account, 95-1099.160

— Other: _____

Virginia Whitted
Signature

July 20, 1992
Date

9204092393

70/000/000
OGC 5224



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1992

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

John M. Curran, Esq.
Albrecht, McGuire, Heffern & Gregg, P.C.
2100 Empire Tower
Buffalo, New York 14202-3783

RE: MUR 3242

Kevin P. Gaughan for
Congress Committee
and William F. Matthews,
Jr., as treasurer

Dear Mr. Curran:

On June 1, 1992, the Federal Election Commission and your clients, Kevin P. Gaughan for Congress Committee and William F. Matthews, Jr., as treasurer, entered into a conciliation agreement in settlement of a violation of 2 U.S.C. § 441a(f). According to the agreement, your clients were required to pay a civil penalty of One Thousand Eight Hundred Dollars (\$1,800.00). The conciliation agreement provided for installment payments, with the first payment of Seven Hundred Fifty Dollars (\$750.00) due on May 15, 1992, and three consecutive monthly payments of Three Hundred Fifty (\$350.00) each due on the first day of each successive month through August 1, 1992.

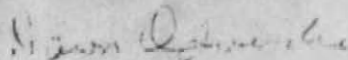
According to Commission records, your clients' last payment of \$350 for the month August has not been received. I advised you of this delinquency in an August 11, 1992 phone conversation and you said you would contact Mr. Gaughan. As of today, my subsequent phone calls to you have not been returned and the payment is still delinquent. Please be advised that, pursuant to 2 U.S.C. § 437g(a)(5)(D), violation of any provision of the conciliation agreement may result in the institution of a civil suit for relief in the United States District Court. Unless we receive the payment immediately, we will recommend that the Commission take the appropriate action.

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John M. Curran, Esq.
Page 2

If you believe the Commission's records are in error, or
if you have any questions, please contact me at (202) 219-3400.

Sincerely,



Dawn Odrowski
Attorney

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