FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3483

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN E.E.S.

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAR 16 12 30 PM '92

Gerald B. Wetlaufer
51 Lakeview Place North
Iowa City, Iowa 52242
(319) 335-9107
fax 319 335 9019

March 6, 1992

MUR 3483

92 MAR 16 PM 3:39

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

Dear Mr. Noble:

I have on a number of occasions within the last month heard a radio advertisement on KXIC in Iowa City, Iowa, that has been described to me by the station as a "public service announcement." The advertisement opens with a statement that small businesses in America face serious challenges from international competitors, then announces (and this is a quote) that "President Bush knows our challenges," then cuts to Bush talking about the importance of small business, and then announces an 800 number from which people can secure information about the programs of the SBA.

I have heard other such spots, all feature President (and candidate) Bush in which he has talked about, in one, about the importance of ducks and, in the other, about the general importance of small businesses. What the "he knows our challenges" spot does that the others don't is to tout the attributes and characteristics of the person who is running for office.

My complaint about this situation is in two parts. First, it appears to me that some or all of these "public service announcements" constitute advertisements containing express advocacy of a candidate (at least as express as are most commercials paid for by campaigns) and that they lack the disclaimer that is required in such advertisements. Second, and without regard to whether these "public service announcements" contain express advocacy, it appears to me that those who have prepared, distributed or played these "public service announcements" have contributed things of clear value to the candidacy of President Bush and that the applicable reporting requirements have not been satisfied in connection with those contributions. Finally, I assume that it is neither proper nor lawful for agencies of the federal government to be making such contributions to a presidential campaign.

I direct this complaint against candidate George Bush, against the Small Business Administration, and against any others either inside or outside of his campaign organization or of the federal government who have in any way been involved in the authorization, the production or the distribution of the "public service announcement" here described and any such other "public service announcements" as may be in violation of the laws and regulations administered by your commission. I ask for whatever sanctions and forms of relief that the commission has the authority to grant.

Please advise me if this complaint is in any respect deficient or if there is any additional information that it would be useful or appropriate for me to provide. Please also advise me at such time as this complaint is resolved or dismissed.

Yours truly,

Gerald B. Wetlaufer

Subscribed and sworn before me this 11th day of March 1992.

Debra S. Paul, Notary
State of Iowa
County of Johnson

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1992

Gerald B. Wetlaufer
51 Lakeview Place North
Iowa City, Iowa 52242

RE: MUR 3483

Dear Mr. Wetlaufer:

This letter acknowledges receipt on March 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by President George Bush, Bush - Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, the Small Business Administration and KXIC Radio (AM - 800). 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 3483. 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.

Sincerely,

Lisa Klein
Assistant General Counsel

Enclosure
Procedures

93040945145

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 20, 1992

J. Stanley Huckaby, Treasurer
Bush - Quayle '92 Primary Committee, Inc.
228 S. Washington Street
Suite 200
Alexandria, VA 22314

RE: MUR 3483

Dear Mr. Huckaby:

The Federal Election Commission received a complaint which alleges that the Bush - Quayle '92 Primary Committee, Inc. ("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 3483. 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, as treasurer, 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.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa Klein
Assistant General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1992

The President
The White House
Washington, DC 20501

RE: MUR 3483

Dear Mr. President:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3483. Please refer to this number in all future correspondence.

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

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If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa Klein
Assistant General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1992

Patricia Saiki, Administrator
Small Business Administration
409 Third Street, SW
7th Floor
Washington, DC 20416

RE: MUR 3483

Dear Ms. Saiki:

The Federal Election Commission received a complaint which alleges that the Small Business Administration ("SBA") 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 3483. 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 SBA 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.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa Klein
Assistant General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1992

Steve Winkey, General Manager
KXIC Radio AM - 800
Dubuque Street and I-80
Iowa City, IA 52240

RE: MUR 3483

Dear Mr. Winkey:

The Federal Election Commission received a complaint which alleges that KXIC Radio 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 3483. 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 KXIC Radio 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.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lisa Klein
Assistant General Counsel

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

OGC 4528

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.
SUITE 800
WASHINGTON, D. C. 20037-1170
TELEPHONE (202) 659-3494
TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3541

March 26, 1992

Dawn M. Odrowski, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Room 657
Washington, D.C. 20463

FEC Ref:MUR3483

Dear Ms. Odrowski:

Enclosed you will find a Statement of Designation of Counsel authorizing this law firm, and the undersigned, to serve as counsel to Iowa City Broadcasting Company in connection with your investigation of MUR3483.

For your future information, Iowa City Broadcasting Company is the licensee, owner, and operator of radio station KXIC, Iowa City, Iowa. We believe that Iowa City Broadcasting Company is the appropriate entity to respond to the Commission's letter of March 20, 1992, which was received by my client March 25, 1992.

We are in the process of preparing a factual response to the Commission's inquiry. We understand that inquiry to include only the broadcast by station KXIC of a public service announcement distributed by the United States Small Business Administration through the Ad Council. We also understand that the inquiry does not encompass certain public service announcements prepared by the U.S. Fish and Wildlife Service which refer to "the importance of ducks", even though those PSAs are mentioned peripherally in the letter of complaint. If these understandings are incorrect, please so inform us immediately.

Also, we note that, contrary to the Commission's letter of March 20, 1992, the letter of complaint from Mr. Wetlaufer does not allege any violation of law by station KXIC. On its face, the complaint is not directed against the station. In recent conversations between the complainant and a representative of Iowa City Broadcasting Company the complainant confirmed that there was no intent to complain of the actions of our client. Moreover, the Commission's letter of March 20 does not cite any section of the Federal Election Campaign Act of 1971, or of the Commission's rules, which are alleged to have been violated by our client. We therefore request that the Commission indicate with greater specificity the specific provisions of the Federal Election Campaign Act of 1971 which our client is alleged to have violated. Fundamental principles of fairness, due process, and administrative law require no less.

In order that we may submit a timely response to the Commission's March 20 letter of inquiry, we look forward to a prompt response from your office. Please feel free to contact the undersigned at the above number at your convenience.

Very truly yours,

Clifford M. Harrington

STATEMENT OF DESIGNATION OF COUNSEL

MUR3463

NAME OF COUNSEL: Clifford M. Harrington, Esq.
Fisher, Wayland, Cooper & Leader

ADDRESS: 1255 23rd Street, NW
Suite 800
Washington, DC 20037

TELEPHONE: (202) 775-3541 (Direct Dial)
(202) 659-3494 (Main Firm Number)
(202) 296-6518 (Facsimile)

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

March 25, 1992

Randy K. Holland
Randy K. Holland
Vice President
Iowa City Broadcasting Company
Licensee of KXIC (AM)

RESPONDENT'S NAME: Iowa City Broadcasting Company

ADDRESS: Tom Ingstad Broadcast Group
8500 Normandale Lake Boulevard
Suite 1740
Bloomington, MN 55437

PHONE: (612) 921-2434 (Main)
(612) 921-2433 (Facsimile)

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 MAR 26 PM 4:07

9 3 0 4 0 9 4 5 1 5 6

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

April 6, 1992

Ms. Lisa Klein, Esq.
Assistant General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3483

Dear Ms. Klein:

This letter and accompanying Exhibits and Affidavits respond to your March 20, 1992 letter to Small Business Administration (Agency) Administrator Patricia Saiki (received by the Agency on March 23, 1992), regarding allegations that the Agency may have violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431, et seq. (the Act). The Agency denies any violation of the Act and, indeed, denies any wrongdoing whatever.

I. THE COMPLAINT

The allegations are contained in a letter complaint by Gerald B. Wetlaufer, dated March 6, 1992, asserting in essence that an Agency informational public service radio announcement (PSA) on international trade, which includes brief statements by President Bush, somehow violated the Act because it contains an introductory statement by an unnamed announcer that "President Bush knows our challenges."

The complaint appears to allege three violations of the Act: First, the PSA purportedly constitutes an advertisement containing express advocacy of a candidate and, as such, requires a disclaimer. Second, because the PSA has allegedly contributed something of value to the President's campaign, such "contribution" arguably should have been reported to the Federal Election Commission (FEC). Third, there was an alleged impropriety in the Agency's alleged contribution to the President's campaign. As will be discussed in detail below, the Agency emphatically denies all these unfounded allegations and any violation of the Act or any other statute.

II. FACTUAL BACKGROUND

The PSA in question, entitled "Exporting", was produced as an informational audio cassette (copy attached, Exh. 1) by contractors to the Agency. Planning for the PSA actually began in February 1990, as part of a comprehensive public information program which began in September 1989. (Larson and Carmack

Affidavits attached.) At that time, the objectives, message, slogan ideas, and personal narratives for the PSAs were considered.

The "Exporting" PSA in question was produced in October 1991. It originally was scheduled to be on the air by late Summer 1991, but was delayed because of dissatisfaction with the original contractor, and the fact that the small business originally featured in the spot had defaulted on an Agency loan. Both the processing of the new contract and the search for a new small business for the spot caused considerable delay.

Production of the PSA was begun and completed in October 1991, and it was distributed to radio stations on November 11, 1991--significantly before President Bush's February 12, 1992 public declaration of his candidacy. The PSA was sent to stations that had previously expressed an interest in airing Agency PSAs. It was prepared as an <u>informational</u> PSA only, without consultation or any other contact with any campaign personnel and without any intent that it be used for political campaign purposes. (<u>See</u> Larson and Carmack Affidavits.)

Typically, the Agency distributes an informational PSA without conditions on airing it. Once distributed, the Agency retains no control over the PSA, although it requests that stations receiving the PSA voluntarily return a Report-of-Use card. (Exh. 2.) Because only some stations returned the card (not including the Iowa stations at issue), the Agency does not know in all cases whether, or when and how many times, the PSA in question has been broadcast since November 1991.

The PSA (Exh. 1), as confirmed by the written script (Exh. 3), opens with an announcer's statement about competition facing small business:

> AMERICANS HARD AT WORK. TODAY, AMERICA'S SMALL BUSINESSES FACE BIG COMPETITION. COMPETITION AS BIG AS THE WORLD. <u>PRESIDENT BUSH KNOWS OUR CHALLENGES</u>....

The voice of the President then is briefly heard, discussing <u>only</u> factual issues of interest to small business and without any reference to any campaign. An 800 number then is provided by the announcer, from which listeners can request further information about the Agency's programs.

This radio PSA contains no discussion--and certainly no "advocacy," either express or implied--of the President's candidacy (which, as previously stated, had not been publicly declared as of the production and distribution dates) or of his qualifications as President.

III. RESPONSES TO ALLEGED VIOLATIONS

There is no merit to Mr. Wetlaufer's complaint for several reasons. First, the complaint--as construed by the Agency absent any citation by Complainant to the Act or its implementing Regulations--fails to allege or establish any violation of the Act. There is no specific allegation that the PSA in question was aired after the President's declaration of his candidacy on February 12.[1] Moreover, the Act is a reporting statute, and is invoked only once certain threshold requirements are met. No such threshold, nor how this PSA allegedly caused this threshold to be reached, has been alleged. Further, as discussed below, there is no violation on the merits.

No Violation on the Merits

Complainant's first allegation of a violation appears to involve 11 C.F.R. § 110.11(a)(1), captioned "Communications; advertising (2 U.S.C. 441d)", which provides in pertinent part:

> ...whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution through any broadcasting station...a disclaimer...shall appear.... (Emphasis added.)

The Agency asserts that the statement in question does not meet the statutory or regulatory definitions of covered "advertising," because it does not advocate--expressly or otherwise--the election of any candidate, nor solicit any contribution.

In particular, the purely factual statement does not meet the 2 C.F.R. § 109.1(b)(2) definition of "expressly advocating" (defined in the context of independent expenditures):

> 'Expressly advocating' means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' and 'Smith for Congress,' or 'vote against,' 'defeat,' or 'reject.'

Here, there is no such message advocating any election or defeat, no named candidate for any election, and no such

---

[1]Complainant alleges hearing the PSA "within the last month" prior to March 6, i.e., between about February 6 and March 6. Thus, he could have heard the PSA prior to the President's February 12 candidacy announcement.

expressions of campaign advocacy. The announcer's statement on the PSA is wholly factual, and merely introduces the President's wholly factual discussion of issues of concern to small business. It is a fact that the President, as Chief Executive in charge of all Federal agencies, knows about the state of small business and the challenges facing it. And it is appropriate that the President should attempt to improve conditions for small business by providing information about the Small Business Administration.

Moreover, the type of "expenditure", necessary to invoke the regulation is not present because the PSA does not come within the statutory definition of "expenditure":

> any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person <u>for the purpose of influencing any election for Federal office</u>;... (Emphasis added.)

2 U.S.C. § 431(9)(A)(i). Here, the PSA's purpose was not to influence any Federal election, nor was it clearly designated for any candidate, as defined in 11 C.F.R. § 100.8(b)(18)(iii). Rather, as stated above, the PSA was purely <u>informational</u>, and directed solely to the needs of small business. Therefore, no disclaimer is required by the Act or its implementing Regulations.

Complainant's second allegation of a violation appears to involve 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. §100.7(a)(1)(iii)(A) and (B), which define a "contribution" as anything of value, including in-kind contributions, made for the purpose of influencing the nomination for election or election of any person, or a Presidential nomination. But, an expenditure for a purely factual PSA on the status and needs of small business, planned and produced for non-campaign purposes several months before the President even publicly declared his candidacy, does not constitute a contribution to influence a Presidential nomination. And because the PSA does not constitute a campaign contribution, the Act imposes no reporting requirement.

Complainant's final allegation of wrongdoing by the Agency appears to be a matter completely outside the Act and the purview of the Commission. As the Agency interprets the complaint, it seems to allege a violation of provisions other than the Act. But in any event, there was no conceivable violation of any other statute under these facts. There was no use of official authority or influence to interfere with or to affect the outcome of an election; nor any active participation in political management of any campaign. The wholly factual, non-political statement on the PSA contained nothing that could be reasonably construed as attempting to affect an election or to manage a campaign.

In summary, the Agency denies any impropriety as to the statement in question and, further, asserts that the threshold statutory and regulatory requirements necessary to invoke Commission jurisdiction are not present. Therefore, the Commission should dismiss Mr. Wetlaufer's complaint.

If you have questions about this letter and atachments, or the Agency's response generally, please contact Mona Mitnick, Chief Counsel for Administrative Law, at 202-205-6645, or you can reach me at 202-205-6642.

Thank you for your consideration of this response on behalf of the Agency.

Sincerely,

Mona Mitnick

for Michael K. Wyatt
General Counsel

AFFIDAVIT

City of Washington, D.C.

I, Nancy Larson, Office of Public Communications, Small Business Administration, Washington, D.C., Public Affairs Specialist, GS-11, being first duly sworn, hereby state as follows on my own personal knowledge:

I have been employed by the Office of Public Communications (OPC), Small Business Administration (Agency) since July 28, 1991. My responsibilities include planning, organizing, coordinating, and evaluating the Agency's publications and audio-visual materials. I am also responsible for conducting a variety of writing and editorial projects. Work is accomplished under the direction and supervision of both the Deputy Assistant Administrator and the Assistant Administrator for Public Communications.

According to my review of this matter, a contract was signed in September 1989 with a firm to develop a public communications plan for the Agency. A public service announcement (PSA) component was first discussed in February 1990. (Attachment 1.) At that time, the objectives, message, slogan ideas, and personal narratives for the proposed PSAs were considered.

The specific objectives of the PSA campaign were: 1) to open new doors of entrepreneurial opportunity in communities nationwide, particularly for women and minorities; and 2) to increase public awareness of the important role that small businesses play in our economy, society, and the global marketplace. The PSAs produced were the culmination of a long-term planning effort. (Attachment 2.)

When I first came to the Agency in July 1991, the day-to-day responsibilities of the continuing PSA campaign became one of my duties, under the supervision and direction of the (then) Assistant Administrator.

In October 1991, I personally was involved in the "Exporting" radio PSA project with an on-location shoot. The actual production had been delayed several months from its projected summer date because of dissatisfaction with the original contractor and the fact that the small business originally featured in the spot had defaulted on an Agency loan. Both the processing of the new contract and the search for a new small business for the spot caused cosiderable delay.

The "Exporting" PSA was completed in October 1991 and sent in November 1991 to radio stations which previously had expressed an interest in airing Agency PSAs. This was months before the President's February 12, 1992 public announcement of his candidacy.

Once the Agency sends PSAs to stations, it cannot control whether, when, and under what conditions they are aired. The Agency does request that stations receiving the PSA voluntarily return a Report-of-Use card, but only a few stations do so.

At no time during my participation in the planning and production of the "Exporting" PSA, from July 28, 1991 to the present, were political considerations or concerns ever discussed or considered. In fact, to my knowledge no one involved in the production of the PSA had any contact with the Bush-Quayle campaign. The purpose of the PSA was informational only; it was not made for the purpose of influencing or affecting any nomination or election of any person to Federal office.

Nancy Larson

Subscribed and sworn to before me this 6th day of April, 1992.

My Commission Expires On: 4/30/94

Notary Public

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

MEMORANDUM

DATE: February 1, 1990

TO: Distribution List

FROM: Mary Mead Crawford MMC
Assistant Administrator
for Public Communications

SUBJECT: Briefing

EVKO Productions, an 8(a) firm, is under contract to this office to develop a long-term public information plan for the Agency.

As part of this project, EVKO is producing a national television public service campaign to be kicked off in conjunction with Small Business Week, May 6-12, 1990. The Administrator has asked that we ensure your thoughts about the public service announcement campaign are part of the development process.

On Monday, February 5 at 2:30 p.m. in the Second Floor Conference Room, we will hold a briefing on the PSA campaign. This briefing will allow you to share ideas and/or comments on how we can accomplish this task most effectively and efficiently.

If you are not able to attend, please ensure a representative from your office will be in attendance.

Thanks.

Attachment 1

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

September 25, 1990

MEMORANDUM

TO: Bill Becker

FROM: Mary Crawford MMC

RE: Focus group test on PSA scripts and slogans

Please find attached:

1) EVKO's 9/24/90 memo summarizing the focus group test of the PSA scripts.
2) EVKO's 9/21/90 memo summarizing the focus group test of the slogans and their recommendation of "SBA: Building America's Future" as our official slogan.
3) A summary report of the focus group test.
4) A transcript of the focus group test. I have marked the start of the discussion about the recommended slogan (p. 18), the start of the discussion about the first PSA (p. 38), and the start of the discussion about the second PSA (p. 47).

If you read through the transcript of comments about the recommended slogan, you'll find that EVKO's logic in recommending this one holds true -- more than any of the other slogans, this one conjured up positive, upbeat, memorable images among those tested.

Also, the key problem area for the PSA scripts was that those tested had trouble figuring out how SBA fit in with the success stories featured -- the link wasn't clear. I'm not sure if this can be fixed by keeping any mention of SBA out of the mouths of the two successful businesspeople. I know this is an area of considerable concern to you, and so wanted to draw your attention to it. I'll have EVKO try, but we may need to weave SBA into what they're saying to make it clear.

In general, the scripts tested very well, and I'm very encouraged by the test results. I think we've got some really good spots on our hands.

(If you read the transcript, you'll see that the second spot didn't test as well as the first one. This is typical in focus group testing -- whatever is tested first always tends to get higher marks than what comes after.)

Please let me know if you have any comments as soon as possible. I expect revised scripts in-hand this week.

cc: Marty Davis

Attachment 2

AFFIDAVIT

City of Washington, D.C.

I, Terry Carmack, Office of Public Communications, Small Business Administration, Washington, D.C., Deputy Assistant Administrator for Public Communications, GM-13, being first duly sworn, hereby state as follows on my own personal knowledge:

I began serving as Deputy Assistant Administrator in the Office of Public Communications (OPC) in January 1991. In this position, I serve as the principal adviser to the Assistant Administrator in developing and implementing overall press and communications activity for the Small Business Administration (Agency). I am also responsible for directing administrative and personnel matters.

I have not been directly involved in the planning, production, and distribution of the public service announcement (PSA) in question, but I am generally familiar with its history. From July 1991 until the present, Nancy Larson, a Public Affairs Specialist in OPC, had the day-to-day responsibility for the project.

I understand from my review of the records that a decision was made in February 1990, before I joined the Agency, to produce PSAs for the Agency. They originally were to be released in May 1990. (Attachment 1 to Larson Affidavit).

I also understand from my review of the records that final decisions to produce "Exporting", with the President's participation, were made no later than May 1991. It was intended that "Exporting" be on the air by late Summer 1991. However, because of procurement and technical production problems, the PSA ultimately was not released to radio stations until November 1991. Once the Agency releases a PSA, it loses any control over the frequency and conditions of broadcast by the stations receiving it.

During my participation in the planning and production of the PSA, its only purpose was to benefit small business. It was never intended to advocate any future candidacy of the President or to influence the outcome of the election. To my knowledge, no one involved with the PSA had any contact with the Bush-Quayle campaign.

Terry Carmack

Subscribed and sworn to before me this 6th day of April, 1992.

My Commission Expires On: MAY 31, 1995

Franklin T. Gibbs WASH, D.C.

Notary Public

NOTARY PUBLIC

93040945167

SBA "Exporting"
:60 Radio PSA
AS PRODUCED 10/18/91

SFX: Audio montage of industrial sounds, shipping boxes being loaded, tug boat horns, voices shouting orders. (EST. & CROSS FADE WITH MUSIC. EST. MUSIC & UNDER THROUGHOUT.)

Anncr: AMERICANS HARD AT WORK. TODAY, AMERICA'S SMALL BUSINESSES FACE BIG COMPETITION. COMPETITION AS BIG AS THE WORLD. PRESIDENT BUSH KNOWS OUR CHALLENGES....

President: SMALL BUSINESSES HELPED BUILD OUR NATION. TODAY MORE THAN 20 MILLION SMALL BUSINESSES EMPLOY ABOUT HALF OF AMERICA'S WORKFORCE.

Anncr: LISTEN TO BUSINESS OWNER LYNN LIVELY.

SFX: Audio montage effect under: high tech industrial sounds, computer key strokes, sonar beeps.

Ms. Lively: NATHAN ROUNDY IS OUR INVENTOR. I KNOW MARKETING. AND WE BOTH KNOW OUR SONAR DESIGN IS GREAT! WE KNEW WE COULD COMPETE OVERSEAS, BUT WE NEEDED SOME GOOD ADVICE. SO WE CALLED S.B.A.

President: THE SMALL BUSINESS ADMINISTRATION AND ITS INTERNATIONAL TRADE PROGRAM PROVIDED THE PERTINENT ADVICE. THE SBA CAN HELP YOU, TOO.

Anncr: FOR A LIST OF SBA PUBLICATIONS, CALL 1-800-8-ASK-SBA. THAT NUMBER AGAIN IS 1-800-8- A-S-K -SBA.

President: SMALL BUSINESS: BUILDING AMERICA'S FUTURE.

9304094511 68

L·W·M
LUKSTAT, WADE & MURRAY

Exh. 2

SBA
U.S. Small Business Administration

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST CLASS MAIL PERMIT NO. 07349 BABSON PARK, MA

PROFESSIONAL MEDIA SERVICES, INC.
P.O. BOX 57718
BABSON PARK, MA 02157-9909

Exh. 3

9304094 5169

SBA

U.S. Small Business Administration

U.S. Small Business Administration
"Exporting" - :30
SBAE - 1191

The U.S. Small Business Administration has produced this PSA to open new doors to entrepreneurial opportunity in your community, and to build public awareness of the important role small businesses play here and in the global marketplace. Your feedback on the use of this PSA will help ensure the effectiveness of future public information efforts.

_______ times per week _______ months airing

Comments: ____

____

____

____

____

Station: __________ Network Affiliation: __________
Address: ____
City, State, Zip: ____
Your Name and Title: ____
Phone Number: ____

Preferred format: 3/4" 1" Beta

OGC4631

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3483

NAME OF COUNSEL: Mona Mitnick

ADDRESS: Small Business Administration
409 3rd Street, S.W.
Washington, D.C. 20416

TELEPHONE: 202-205-6645

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 6, 1991
Date

Mona Mitnick
Signature
for Michael K. Wyatt
General Counsel

RESPONDENT'S NAME: Small Business Administration

ADDRESS: 409 3rd Street, S.W.
Washington, D.C. 20416

HOME PHONE:

BUSINESS PHONE: 202-205-6645

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92 APR -6 PM 5:25

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OFFICE OF GENERAL COUNSEL

OGC 4635

BUSH ★★★ QUAYLE 92

April 7, 1992

92 APR -7 PM 2:56

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

Re: MUR 3483 -- Bush - Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, Treasurer

Dear Mr. Noble:

This letter constitutes my Response and the Response of Bush - Quayle '92 Primary Committee, Inc. ("Bush - Quayle 92") (collectively "Respondents"), to the Complaint filed with the Federal Election Commission ("FEC" or the "Commission") by Mr. Gerald B. Wetlaufer ("Complainant") of Iowa City, Iowa. Respondents received the Complaint on March 24, 1992.

Complainant alleges that a radio station in Iowa City broadcast a public service announcement about the programs of the Small Business Administration ("SBA") that somehow constituted a campaign advertisement for President Bush. Bush - Quayle 92, however, was not involved in any way with or consulted about the production, distribution, or broadcast of this public service announcement. Moreover, Complainant has failed to allege facts that would indicate that the announcement advocated the President's re-election or was anything other than what it purported to be -- an official public service announcement by a government agency. For these reasons, we respectfully submit that the Commission should dismiss the Complaint.

Statement of Facts

The basis of the Complaint is that a radio station, KXIC in Iowa City, allegedly broadcast a public service announcement for the programs of the SBA. The Complaint does not disclose the number of times the public service announcement ran or even the dates on which it ran. The public service announcement allegedly contained a statement that "President Bush knows our [small business] challenges" and a brief tape of the President talking about the importance of small businesses. Comp. at 1. The announcement concluded by providing a toll-free telephone number for callers to get information about SBA programs. Id. Although the Complaint refers to other public service announcements -- one involving "ducks" -- it apparently concedes that these others are of no concern to the Commission. Id.

Based on these allegations, Complainant makes two charges. First, he contends that the public service announcement expressly advocated the re-election of President Bush without the disclaimer required by law. Id. Second, he argues that the public service announcement was a contribution to the President's re-election campaign that has not been reported as such by Bush - Quayle 92 to the FEC. Id. The Complaint concludes with the suggestion that "it is neither proper nor lawful for agencies of the federal government to be making such contributions to a presidential campaign." Id.

As the Treasurer of Bush - Quayle 92, I am responsible for all the checks issued by the campaign and for the maintenance of the campaign's records. After due inquiry, I have found no involvement by Bush - Quayle 92 in any way with the production, distribution, or broadcast of any public service announcement, including the one described by Complainant. Even if Complainant's factual allegations were accepted as true, the Complaint does nothing more than describe the broadcast of a legitimate public service announcement produced by a federal agency acting in its official capacity.

Discussion

1. No disclaimer for the alleged public service announcement was necessary because it did not solicit campaign contributions or expressly advocate the re-election of the President or the defeat of another clearly identifiable candidate. Only an advertisement that "expressly advocat[es] the election or defeat of a clearly identified candidate, or solicits any contribution" must contain the disclaimer required by the Federal Election Campaign Act of 1971 and FEC regulations. See 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1).

A similar standard is applied in other contexts. For example, FEC regulations define "[e]xpressly advocating" in the context of "independent expenditures" as "any communication containing a message advocating election or defeat." 11 C.F.R. § 109.1(b)(2); see 2 U.S.C. § 431(17). Moreover, the D.C. Circuit has held that an event is non-political, and thus not campaign-related, if:

"(1) there is an absence of any communication expressly advocating the nomination or election of the

> [candidate] appearing or the defeat of any other candidate, and (2) there is no solicitation, making, or acceptance of a campaign contribution for the [candidate] in connection with the event."

<u>Orloski</u> v. <u>Federal Election Commission</u>, 795 F.2d 156, 160 (D.C. Cir. 1986).

The public service announcement described by Complainant certainly did not advocate the re-election of the President or the defeat of his opponent(s), nor did it solicit contributions. Thus, there was no need for a disclaimer.

2. For essentially the same reasons, the public service announcement did not constitute an in-kind contribution to Bush - Quayle 92. A contribution is a "gift, subscription, loan, advance, or deposit of money or anything of value made by any person <u>for the purpose of influencing any election for Federal office</u>." 2 U.S.C. § 431(8)(A)(i) (emphasis added); 11 C.F.R. § 100.7(a)(1). The purpose of the public service announcement at issue in this matter was the promotion of SBA programs, not the re-election of President Bush. According to the Complaint, the public service announcement discussed problems facing small businesses and the availability of SBA programs, and provided a toll-free number for further information.

It is the "major purpose" of an advertisement that determines whether it is a contribution or expenditure in support of a candidate. <u>See</u> Advisory Opinion 1977-42, Fed. Election Camp. Fin. Guide (CCH) ¶ 5313, at 10,283 (March 12, 1978). If there is no express advocacy on behalf of a candidate, no solicitation of funds, and the major purpose of the advertisement or broadcast is not to influence the election of the candidate, then the advertisement or broadcast does not seek to influence an election to federal office. Thus, the advertisement or broadcast is not a contribution or expenditure in support of a candidate. <u>Id</u>.; <u>see also</u> Advisory Opinion 1978-15, Fed. Election Camp. Fin. Guide (CCH) ¶ 5304, at 10,266 (March 30, 1978) (although candidate's "involvement in the fundraising activity of the American Cancer Society may indirectly benefit his Federal candidacy, the Commission concludes that in the circumstances . . . described, the <u>major purpose</u> of the activity is not the nomination or election of a candidate") (emphasis added).

In <u>Epstein</u> v. <u>Federal Election Commission</u>, [1990 Transfer Binder] Fed. Election Camp. Fin. Guide (CCH) ¶ 9161, at 51,243 (D.D.C. 1981), the court approved the FEC's "major purpose" test for determining whether an advertisement is a contribution or expenditure. In <u>Epstein</u>, the major purpose of the advertisement

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by Reader's Digest was the promotion of sales of the magazine, even though the advertisement gave publicity to certain political candidates. On the basis of this record, the FEC had concluded that the advertisement was not a contribution to or expenditure by the candidates mentioned in the advertisement. The court found the factual findings by the FEC reasonable and the application of the "major purpose" test not arbitrary. Id. at 51,244.

Because the public service announcement in this case did not advocate the re-election of the President or the defeat of his opponent(s), did not solicit contributions, and had the "major purpose" of promoting SBA programs rather than the re-election of President Bush, it cannot be deemed an in-kind contribution to Bush - Quayle 92. Accordingly, there was no need for Bush - Quayle 92 to make any report of it to the FEC and no impropriety or illegality in the SBA sponsoring the public service announcement.

Conclusion

The Complaint does not state a violation of any statute or regulation under the jurisdiction of the FEC. Respondents respectfully request that the General Counsel recommend to the Commission that it find no reason to believe that a violation has occurred, and that this matter be promptly closed.

Respectfully submitted,

J. Stanley Huckaby

J. Stanley Huckaby
Treasurer

cc: Dawn M. Odrowski, Esq.
Federal Election Commission

9 3 0 4 0 9 4 5 1 7 5

Verification

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

J. Stanley Huckaby

Sworn and subscribed to before me this 7th day of April, 1992.

Notary Public

My Commission Expires May 31, 1993

9 3 0 4 0 9 4 5 1 7 6

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3483

NAME OF COUNSEL: Bobby R. Burchfield, General Counsel
John J. Sullivan, Deputy General Counsel

ADDRESS: Bush - Quayle '92 Primary Committee, Inc.
1030 15th Street, N.W.
Washington, D.C. 20005

TELEPHONE : (202) 336 - 7110

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

4/7/92
Date

J Stanley Huckaby
Signature

RESPONDENT'S NAME: J. Stanley Huckaby, Treasurer

ADDRESS: Bush - Quayle '92 Primary Committee, Inc.
1030 15th Street, N.W.
Washington, D.C. 20005

HOME PHONE: (703) 329 - 1615

BUSINESS PHONE: (202) 336 - 7300

9 3 0 4 0 9 4 5 1 7 7

GC C # 4665

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 APR 10 PM 3:22

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.
SUITE 800
WASHINGTON, D. C. 20037-1170
TELEPHONE (202) 659-3494
TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

(202) 775-3539

April 10, 1992

93040945178

VIA HAND DELIVERY

Dawn M. Odrowski, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., Room 657
Washington, D.C. 20463

Re: FEC Reference MUR 3483

Dear Ms. Odrowski:

By letter dated March 20, 1992, and received on March 26, 1992, you notified our client, Iowa City Broadcasting Company, of an allegation that its radio station, KXIC, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). (Both the owner-corporation and its radio station are hereinafter referred to as "KXIC".) By your letter, you gave KXIC the opportunity to demonstrate in writing that no action should be taken against it and to submit any materials which it believed were relevant to your determination. As counsel for KXIC, we hereby respond to your notice.

Based on the facts described in the attached declaration of our client's general manager, we categorically deny that KXIC violated the Act. Indeed, we believe that KXIC's actions in broadcasting the public service announcement at issue were explicitly excluded from the prohibitions of the Act. Moreover, KXIC's conduct was protected by the First Amendment; and it would violate the United States Constitution for the Act to require the station to refrain from such conduct, or to impose a penalty on the station for that conduct.

The facts, as confirmed by the enclosed declaration of our client's general manager, are as follows. During 1991, KXIC regularly received from the non-profit Advertising Council a number of tape public service announcements from non-profit and governmental entities. As part of its normal business effort as a press entity, and to meet its responsibilities as a licensee of the Federal Communications Commission to present programming that addresses issues of concern to the community, KXIC broadcast one of these tapes, entitled "Exporting," which it understands was prepared by the United States Business Administration ("SBA"). <u>See</u> <u>Deregulation of Radio</u>, 84 FCC 2d 968, 978-79 (1981). (A transcript of this tape is attached as Exhibit 1.)

The complaint before the Federal Election Commission, filed by law professor Gerald B. Wetlaufer, alleges that this announcement constitutes an advertisement containing express advocacy of the candidacy of President Bush for re-election. Professor Wetlaufer focuses especially on one line of the "Exporting" tape stating that "President Bush knows our challenges," and claims that "it appears to him" that the federal agencies that made this statement had "contributed things of clear value to the candidacy of President Bush and that the applicable reporting requirements have not been satisfied in connection with those contributions." Professor Wetlaufer did <u>not</u>, however, direct his complaint against KXIC.

Without even addressing Professor Wetlaufer's substantive allegations about the content of the public service announcements -- allegations about which we have serious doubts -- we believe that the FEC should not investigate KXIC in connection with this matter. The Act makes it illegal for any corporation to make any direct or indirect gift of money or services or "anything of value" to any candidate. 2 U.S.C. §§441b(a), 4416(b)(2). But the Act creates an explicit <u>exclusion</u> for "any news story, commentary or editorial distributed through the facilities of any broadcasting station ... unless such facilities are owned or controlled by any political party, political committee, or candidate..." 2 U.S.C. §431(9)(B)(i). The enclosed declaration by our client makes it clear that KXIC is neither owned nor controlled by any political party, political committee, or candidate. Moreover, applicable case law establishes that the press exemption is intended to cover broadly all of a station's "normal business activity as a press entity." <u>FEC v. Phillips Publishing Co.</u>, 517 F.Supp. 1308, 1313 (D.D.C. 1981); <u>see</u> <u>Readers Digest Ass'n v. FEC</u>, 509 F.Supp. 1210 (S.D.N.Y. 1981) (dissemination of publicity held to fall within exemption). Because the declaration attached hereto establishes that the broadcast of the public service "Exporting" tape was in fact part of KXIC's normal business activities as a press entity, the station's broadcast falls squarely within the press exemption.

Moreover, any attempt to hold KXIC liable for its public service broadcast of "Exporting" would violate the First Amendment. <u>See</u> <u>FEC v. Massachusetts Citizens for Life, Inc.</u>, 479

U.S. 238 (1986) (holding unconstitutional spending limits on organization formed for the basis of promoting political ideas). The Constitution guarantees radio stations such as KXIC the unfettered right to cover political events. See id. at 251 (discussing House of Representatives' Report stating that the press exemption "assures the unfettered right of the newspaper, TV networks, and other media to cover and comment on political campaigns.") We are certain that Professor Wetlaufer did not mean to question this fundamental Constitutional right when he complained about the tapes produced by the SBA.

If you have any questions about any of the information we have supplied, please feel free to contact either of us.

Sincerely,

Barry H. Gottfried

Clifford M. Harrington
Barry H. Gottfried

5100-003

DECLARATION

Steven A. Winkey, does hereby state under penalty of perjury as follows:

1. I am the general manager of KKRQ/KXIC, Iowa City, owned by Iowa City Broadcasting. I am competent to make this declaration and am authorized to do so on behalf of Iowa City Broadcasting.

2. Iowa City Broadcasting is neither owned nor controlled by any political party, political committee or candidate.

3. During 1991, we at KXIC received from the non-profit Advertising Council a number of audio tapes of public service announcements. One of these tapes was a sixty-second tape entitled "Exporting." It was and is our understanding that this tape was prepared by the United States Small Business Administration ("SBA").

4. As part of KXIC's normal business effort as a press entity, and to help meet our responsibilities as a licensee of the Federal Communications Commission to present programming that addresses issues of concern to the community, the station broadcast the public service announcement entitled "Exporting." We have made a transcript of this tape, and it is attached to my declaration as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 1992.

[signature]

Steven A. Winkey

KKRQ 100.7 FM
ALL OLDIES ALL THE TIME

KXIC RADIO 80

EXHIBIT 1

U.S. SMALL BUSINESS ADMINISTRATION
:60 RADIO PSA
"EXPORTING" 10/22/91

Female Voice 1: Americans hard at work. Today America's small businesses face big competition. Competition as big as the world. President Bush know our challenges.

Bush: Small businesses help build our nation. Today more than 20 million small businesses employ about half of America's work force.

Female Voice 1: Listen to business owner Lynn Lively.

Female Voice 2: Nathan Round is our inventor and I know marketing. And we both know our sonar design is great. We knew we could compete overseas, but we needed some good advice, so we called SBA.

Bush: The Small Business Administration and it's international trade program provided the pertinent advice. the SBA can help you, too.

Female Voice 1: For a list of SBA publications call 1-800-8 ASK SBA. That number again is 1-800-8ASKSBA

Bush: Small business, building America's future.

Box 2388 Iowa City, Iowa 52244 (319) 354-9500

RECEIVED
F.E.C.
SECRETARIAT

93 MAY 17 PM 4:08

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR #s 3483, 3605, 3615, 3624,
3660, 3706, 3709, 3710
STAFF MEMBER: Lawrence L. Calvert, Jr.

COMPLAINANTS:

MUR 3483: Gerald B. Wetlaufer
MUR 3605: Rodney G. Gregory, as General Counsel to Friends of Corinne Brown
MUR 3615: Don Brewer Jr., as Chairman of the Duval County Republican Executive Committee
MUR 3624: Walter H. Shapiro
MUR 3660: Dr. Philip W. Ogilvie
MURs 3706, 3709, and 3710: William D. White

RESPONDENTS:

MUR 3483:
George Bush
Bush-Quayle '92 Primary Committee and J. Stanley Huckaby, as treasurer
KXIC Radio
U. S. Small Business Administration

MUR 3605:
Andrew E. Johnson
Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer
WVOJ Radio

MUR 3615:
Clinton/Gore '92 Committee and Robert A. Farmer, as treasurer
WJXT-TV

MUR 3624:
Bush-Quayle '92 Primary Committee and J. Stanley Huckaby, as treasurer
Bush-Quayle '92 General Committee and J. Stanley Huckaby, as treasurer
WBT Radio

MUR 3660:
Flower & Garden Magazine

MUR 3706:
Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and Sidney Rosenblatt, as treasurer
Arlen Specter
Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer
WDUQ Radio
Kevin Gavin

9 3 0 4 0 9 4 5 1 8 3

MUR 3709: Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
WPXI-TV
Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota
West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop
Willoughby Communications

MUR 3710: Arlen Specter
Citizens for Arlen Specter
and Stephen J. Harmelin, as treasurer
WPXI-TV

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(B)(i)
2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)
2 U.S.C. § 441b
2 U.S.C. § 441b(a)
2 U.S.C. § 441d
2 U.S.C. § 441d(a)(1)
26 U.S.C. § 9003(d)
11 C.F.R. § 100.7(a)(1)(iii)(A)
11 C.F.R. § 100.7(b)(2)
11 C.F.R. § 100.8(b)(2)
11 C.F.R. § 114.4(e)
11 C.F.R. § 114.9(d)
47 C.F.R. § 73.1940(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. <u>GENERATION OF MATTERS</u>

These matters arise from various complaints filed in 1992 concerning several 1992 elections. Each complaint alleges that a news story or broadcast constituted a prohibited in-kind contribution from a media corporation to candidates or committees in violation of 2 U.S.C. § 441b. Accordingly, the complaints are treated in one report. Details about the generation of each particular matter and the material facts of each case will be provided in the next section.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation, except through a separate segregated fund, may make a contribution or expenditure in connection with any Federal election. 2 U.S.C. § 441b. However, the Act and the Commission's regulations exclude, under certain conditions, costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure". 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

In Readers' Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981), the court, interpreting the Act, stated that the media exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. The Commission has interpreted the media exemption broadly, consistent with Congress' admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H. R. Rep. No. 943, 93d Cong., 1st Sess., at 4 (1974). For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]", the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption. To determine whether a medium of communication fits one of these descriptions, the Commission has applied the definitions of "broadcaster," "newspaper", and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). See, e.g. MURs 2277 and 2567. Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification were explicitly drafted with the media exemption in mind. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979).

According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission [("FCC")], as well as networks." 44 Fed. Reg. at 76,735. Magazines and "other periodical publications" are "publication[s] in bound pamphlet form appearing at regular intervals (usually either weekly, bi-weekly, monthly or quarterly) and containing articles of news, information, opinion and entertainment, whether of general or specialized interest. Only magazines and periodicals which ordinarily derive their revenues from subscriptions and advertising" are to be exempt. 44 Fed. Reg. at 76,735.

In addition to the "legitimate press function" test, the Commission must also determine whether the press entity is owned or controlled by any political party, political committee or candidate. This test is a straightforward inquiry into whether the complaint, response or other data available to the Commission suggest that a media entity is so owned or controlled. See, e.g., MUR 3645. If it is, it qualifies for the exemption only in certain narrowly defined situations described in the regulations. See 11 C.F.R. §§ 100.7(b)(2)(i) and (ii) and 100.8(b)(2)(i) and (ii).[1]

Paid advertising expressly advocating a candidate's election or defeat would not qualify for the media exemption and would be subject to the requirements of 2 U.S.C. § 441d. That section provides disclaimer requirements "whenever any person makes an

1. Under the cited provisions, if a media entity is owned or controlled by a party, committee or candidate the media exemption extends only to the costs of news stories "(i) which represent . . . . bona fide news account[s] communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which [are] part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area . . . ." These provisions are not applicable to any of the MURs discussed in this report. However, it is important to note that, contrary to the assertion of complainant William D. White in MURs 3706, 3709 and 3710, the "reasonably equal coverage" requirement is triggered only by a finding that a media entity is owned or controlled by a party, committee or candidate.

expenditure" for "general public political advertising" containing express advocacy. Obviously, Congress did not intend through the media exemption to exempt paid advertising containing express advocacy from the definition of "expenditure"; otherwise, Section 441d would be a nullity. By contrast, paid non-political advertising sponsorship of a broadcast or publication protected by the exemption is permitted, provided that the sponsor exercises no control over the exempt content. See Advisory Opinion 1987-8 (corporate sponsorship of magazine and television interview series with presidential candidates was not prohibited).

B. The Cases

1. MUR 3483

This matter was generated by a complaint received from Gerald B. Wetlaufer of Iowa City, Iowa against KXIC Radio of Iowa City; then-President George Bush; the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer; and the U. S. Small Business Administration (SBA). The complaint alleges that taped radio public service announcements produced by SBA and broadcast by KXIC contained the statement "President Bush knows our challenges", leading into a voice-over message from the President promoting SBA export assistance programs. The complaint appears to allege that because President Bush was a candidate for re-election at the time the public service announcement was broadcast, the announcement expressly advocated his candidacy and was a thing of value to his campaign. Consequently, the complaint theorizes that the production and airing of the public service announcement constituted a prohibited in-kind contribution from the SBA and KXIC to the Bush campaign. Attachment A-1.

As a threshold matter, this Office is of the opinion that the Commission lacks jurisdiction over the SBA in this case. Although 2 U.S.C. § 441a(a)(1) provides that "no person" shall make contributions in excess of certain limits, 2 U.S.C. § 431(11) provides that "the term 'Person' . . . does not include the Federal Government or any authority of the Federal Government." The SBA is, of course, a federal agency. Moreover, for reasons that will be shown, even if the SBA were subject to the Commission's jurisdiction this Office would still recommend that the Commission find no reason to believe the SBA violated any provision of the Act.

KXIC asserts it broadcast the announcement "to meet its responsibilities as a licensee of the Federal Communications Commission to present programming that addresses issues of concern to the community," and argues that the broadcast of public service announcements like the one at issue here is <u>per se</u> within the legitimate press function of a radio station. Attachment A-3 at 2.

In Advisory Opinion 1978-76, the requester, a member of Congress, had produced a film on the services his office made available to constituents. A television station in the member's home district proposed to broadcast the film free of charge as a public service announcement. The Commission determined that the media exemption was "available when, in the exercise of its responsibility [as an FCC licensee] to serve the public interest, convenience and necessity, the station carries a . . . public service announcement to inform constituents of facilities and services provided" by the member's office.

The SBA announcement appears to meet the test articulated in AO 1978-76. KXIC asserts it broadcast the announcement in furtherance of its obligation as an FCC licensee, and, by providing a toll-free telephone number listeners could call to order SBA publications, the announcement informed listeners of services provided by the Federal government.[2] Attachment A-3 at 5. Additionally, KXIC's general manager, Steven Winkey, declared that KXIC's parent, Iowa City Broadcasting Co., is neither owned nor controlled by a party, committee or candidate. Id. at 4. Because the announcement appears to be within the press exemption, it does not appear to contribute a contribution to the Bush-Quayle '92 Primary Committee.

Therefore, this Office recommends that the Commission find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee and J. Stanley Huckaby, as treasurer, violated any provision of the Act with respect to MUR 3483 and close the file.

2. MUR 3605

This matter was generated by a complaint received from

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2. Cf. former 47 C.F.R. § 73.1810(d)(4), the FCC's former definition of a "public service announcement", which provided that announcements for which the broadcaster made no charge and which promoted the activities and services of Federal agencies, among other entities, qualified as public service announcements. Although the FCC has removed the regulation from the Code of Federal Regulations, see 49 Fed. Reg. 33,658 (August 24, 1984), it has continued to refer to the definition. See In the Matter of Policies and Rules Concerning Children's Television Programming, 5 FCC Rcd. 7199, 7204-05 n. 10 (1990).

Rodney G. Gregory, as general counsel to Friends of Corinne Brown, against Andrew E. Johnson, the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, and WVOJ Radio of Jacksonville, Florida.[3] The complaint alleged that Johnson continued to host a call-in radio program on WVOJ after becoming a candidate for Congress, and that this arrangement may have constituted a prohibited in-kind contribution from WVOJ to the Johnson campaign. Attachment B-1. WVOJ's response indicates that both before and after becoming a candidate for Congress, Johnson paid WVOJ for two hours of live broadcast time every weekday afternoon and a two hour replay at night. <u>See</u> Attachment B-2 at 1. The station asserts that after Johnson became a Congressional candidate, the time was paid for by his campaign committee. <u>Id</u>. at 3. The committee's disclosure reports appear to corroborate the assertion.

As discussed <u>supra</u> at 5-6, paid political advertising falls outside the scope of the news media exemption. Furthermore, because it appears that WVOJ charged Johnson the usual and normal charge for air time consistent with 11 C.F.R. § 100.7(a)(1)(iii)(A), this Office recommends the Commission find no reason to believe that WVOJ violated 2 U.S.C. § 441b, and close

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3. Friends of Corinne Brown was the principal campaign committee of Corinne Brown, who, like Johnson, was a candidate for the Democratic nomination for U. S. Representative from the Third Congressional District of Florida. In the September 1, 1992 Florida Democratic primary, Brown and Johnson received 43 percent and 31 percent of the vote, respectively, qualifying them for the October 1, 1992, run-off election. In the run-off, Brown was nominated, receiving 64 percent of the vote to Johnson's 36 percent. Brown was elected to the U. S. House of Representatives in the November 3, 1992 general election.

the file with respect to WVOJ.[4]

However, WVOJ's response raises the question of whether Johnson's call-in show carried a legally sufficient disclaimer. The response indicates that after Johnson became a candidate, the show was identified as a "Paid Political Broadcast." Attachment B-2 at 2. 2 U.S.C. § 441d(a)(1) provides that political advertising, "if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee." A disclaimer identifying Johnson's show as a "Paid Political Broadcast" without identifying who paid for it would not meet Section 441d(a)(1)'s requirements. Accordingly, this Office recommends that the Commission find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

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4. 11 C.F.R. § 100.7(a)(1)(iii)(A) provides that the provision of services to a political committee at less than the usual and normal charge for such services will constitute an in-kind contribution to the committee. Both the contract between WVOJ and Johnson and the FCC's regulations governing the sale of broadcast time to candidates provide that if air time is used by candidates personally within 45 days of a primary or run-off election, the station may charge the "lowest unit charge of the station for the same class and amount of time for the same period;" prior to 45 days before an election, the station may charge not more than "the charges made for comparable use of such station time by other users." Attachment B-2 at 3; 47 C.F.R. § 73.1940(b) (reprinted at 11 C.F.R. Supp. A., p. 265 (1992 ed.)). Moreover, the rates on the contract appear generally consistent with the advertising rates quoted for WVOJ in the **Gale Directory of Publications and Broadcast Media 1993**, taking into consideration the time of broadcast and the station's wattage. Therefore, it appears that WVOJ charged Johnson the "usual and normal" charge for air time.

3. MUR 3615

This matter was generated by a complaint received from Don Brewer, Jr., chairman of the Duval County (Florida) Republican Executive Committee, against WJXT-TV in Jacksonville, Florida and the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer. The complaint alleges that WJXT broadcast a live call-in interview program featuring Democratic presidential nominee Bill Clinton on September 9, 1992.[5] According to the complaint, WJXT invited the public and placed television sets on its premises outside its studio building so that members of the public could watch the program. It then allegedly allowed the Clinton campaign to erect a tent over the television sets and exclude persons who were not Clinton supporters from the tent. The Clinton committee purportedly "enclosed the area with police tape and police officers to prevent non-Clinton supporters from viewing the program. Approximately two hundred and fifty Clinton supporters were allowed into [the] viewing area while approximately seventy non-Clinton supporters were held away from the event by police lines." Attachment C-1. Moreover, the complaint alleges that "WJXT . . . allowed Clinton financial supporters into the station to meet privately with Governor Clinton." Id. The cumulative effect of these events, the complaint alleges, was a prohibited corporate in-kind contribution from WJXT to the Clinton campaign.

Both responses dispute the complaint's version of the facts.

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5. The broadcast was apparently carried statewide over the "Florida News Network," which consists of WJXT and several other television stations.

While Clinton apparently did appear on WJXT's September 9 broadcast, both responses indicate that the television sets were brought onto WJXT's property by the Clinton campaign, not WJXT. Attachment C-2 at 3; Attachment C-3 at 3. However, WJXT management apparently did not object to the sets' presence; management had already decided to permit the general public to gather on its property while Clinton was inside the studio building, attachment C-2 at 2, and it appears that this decision may have come in response to a request from the Clinton committee. Attachment C-3 at 5. Station management explicitly gave the Clinton campaign permission to put up the tent, but not until the tent was partially erected. Attachment C-2 at 3. Neither response directly disputes the complaint's contention that persons opposed to Clinton's candidacy were excluded from the tent. However, WJXT asserts that crowd control at the site was handled by local police (including some off-duty officers with whom it contracted to direct traffic in its parking lot) and the U. S. Secret Service, and that any actions by those agencies or by Clinton supporters to exclude Clinton opponents from the premises were taken without station management's knowledge or approval. Id. at 2. Finally, WJXT denies that it hosted a "private meeting" between Clinton and "financial supporters"; instead, it asserts it hosted a small reception after the program for Clinton and local dignitaries. Id. at 3-4.[6]

The broadcast itself appears to fall within the "media exemption." A call-in interview with a major party nominee for President is a legitimate news story, and it makes no difference that the station is producing, as well as covering, the news story. Cf. MUR 2567 (debates produced by broadcasters are news stories within meaning of exemption). WJXT is an FCC licensee, and there is no indication that it is owned or controlled by a party, candidate, or committee. Moreover, there appears to be no factual basis for any implication in the complaint that the event after the broadcast was a Clinton fundraiser.

This Office does not concur with WJXT or the Clinton-Gore Committee's contention that any costs incurred by WJXT with regard to the tent, including the opportunity costs of allowing the Clinton Committee to use WJXT property to install TV sets and a tent were "costs incurred in covering or carrying" Clinton's appearance on the broadcast and therefore exempt pursuant to 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Contrary to WJXT's assertions, the station's ability to carry the broadcast was in no way altered by its decision to allow demonstrators on station property. In fact, granting permission to the Clinton Committee to set up TV sets and to erect a tent to shelter the TVs and Clinton supporters is entirely unrelated to the station's

6. WJXT does acknowledge that some Clinton supporters entered the station building and "were restricted to a roped off area" in the lobby, although the station claims WJXT personnel did not let them into the building. The station also acknowledges that Mr. Clinton shook hands with these supporters as he walked through the lobby on his way out. See C-2 at 12-13.

broadcast function and should not be viewed as a "cost incurred in covering or carrying a new story."

Under the Act, corporations are prohibited from making any contribution or expenditure in connection with the election of a Federal candidate, and candidates and political committees are prohibited from knowingly accepting any such contributions or expenditures. 2 U.S.C. § 441b(a). For purposes of Section 441b, "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan advance, deposit or gift or money, or any services, or anything of value to any candidate, campaign committee, or political committee or organization in connection with a federal election." 2 U.S.C. § 441b(b)(2). In this case, the use of WJXT's property by the Clinton campaign clearly constitutes an in-kind contribution prohibited under Section 441b.[7]

WJXT advances two arguments for concluding that, even without the protection of the news media exemption, it made no contribution or expenditure in this case. First, the station argues that none of its actions were taken for the purpose of influencing a federal election as would be required by 2 U.S.C. § 431(8) under Orloski v. FEC, 795 F.2d 156 (D.C. Cir. 1986). That case involved an address at a picnic by an incumbent officeholder in his capacity as a Member of Congress; here Clinton

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7. While the Corporations Division of the Office of the Secretary of State of Florida lists no corporation under the name "WJXT," the Gales Directory of Publications and Broadcast Media 1992 lists WJXT as owned by Post-Newsweek Stations, Inc. of Washington, D.C.

spoke to Florida voters not in his capacity as Governor of Arkansas but in his capacity as a Presidential candidate.[8] The station also argues that its actions do not constitute expenditures on the grounds that they lack "express advocacy." WJXT attempts to rely on the Supreme Court's holding "that an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of Section 441b. FEC v. Massachusetts Citizens for Life, 479 U.S. 246, 249 (1986). Respondent's argument carries no weight here since this case does not involve independent expenditures but rather in-kind contributions for which the "express advocacy" limitation does not apply.

Accordingly, it appears that WJXT made, and the Clinton campaign knowingly received, a prohibited contribution. Therefore, this Office recommends that the Commission find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a) and that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

4. MUR 3624

This matter was generated by a complaint received from Walter H. Shapiro of Charlotte, North Carolina, against WBT Radio of Charlotte, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees. The complaint alleges that by

8. WJXT actually invited both major party candidates to appear for Town Meeting programs. The Bush campaign initially declined the offer and then subsequently agreed to participate in a program broadcast on October 23, 1992. See Attachment C-2 at 1.

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broadcasting the nationally syndicated Rush Limbaugh radio program, WBT effectively broadcast three hours a day of unpaid advertising for the Bush-Quayle campaign and thereby made a prohibited in-kind contribution. Attachment D-1. On November 30, 1992, Shapiro amended his complaint, alleging that Limbaugh was in a business relationship with Roger Ailes, a consultant to former President Bush's 1988 campaign, and that Bush and then-Vice President Quayle appeared on the Limbaugh program while other candidates for President and Vice President did not. Attachment D-2.

WBT is licensed by the FCC, and is owned not by any party, candidate or committee but by Jefferson-Pilot Communications Co., a North Carolina media corporation. In a sworn affidavit in response to the complaint, Richard Jackson Whitt, WBT's general manager, stated that the Limbaugh program is a nationally syndicated "call-in" talk show broadcast for three hours every weekday. On the typical show, Limbaugh "states his opinion on some subject and then invites callers, who may express opposing or supporting views. . . . Politics may or may not be discussed on any given day." Attachment D-4 at 5-6. Limbaugh's program therefore appears to be commentary by a third party not employed by WBT; such third-party commentary is squarely within the "legitimate press function" of a broadcaster. Advisory Opinion 1982-44. WBT's broadcast of the Rush Limbaugh program thus appears to be protected by the media exemption, and there appears to have been no prohibited in-kind corporate contribution for either Bush-Quayle committee to accept.[9] Accordingly, this Office recommends that the Commission find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees violated any provision of the Act with respect to MUR 3624, and close the file.

5. **MUR 3660**

This matter was generated by a complaint received from Dr. Philip W. Ogilvie of Washington, D. C. against Flower & Garden magazine. The complaint alleges that Flower & Garden's use of Barbara Bush's picture on the cover of its November 1992 issue was an illegal in-kind contribution to the presidential campaign of Mrs. Bush's husband. Attachment E-1.

As the response of KC Publishing, Inc., the parent of Flower & Garden, points out, Barbara Bush was a public figure whose interest in gardening was newsworthy for a general-interest publication devoted to that topic; the cover picture accompanied an interview with Mrs. Bush printed inside the magazine. Attachment E-2. Moreover, Flower & Garden would appear to be a "bona fide" magazine. From a xerographic copy of the magazine's cover, it would appear that Flower & Garden is in bound pamphlet form. It is published every other month, and apparently has a

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9. Shapiro's amendment to the complaint, which must be read broadly even to find an allegation of conduct that would violate the Act, may be an attempt to allege that through a web of unsubstantiated relationships between the committees, Ailes, and Limbaugh, the costs associated with the program constituted in-kind contributions. No factual support is offered for such an allegation.

regular subscription price of $12.95 per year, a subscription and newsstand circulation of more than 570,000, and regular advertising rates. 1 **Gale Directory of Publications & Broadcast Media 1993** 1165. Further, it appears to contain articles of interest to the general gardening public. Therefore, Flower & Garden's interview with Barbara Bush appears to have been within its legitimate press function.

KC Publishing's response does not explicitly address the issue of ownership or control, but no available data suggest that KC Publishing is a party, committee or candidate. FEC indices reveal no campaign activity by KC Publishing or publisher John C. Prebich in the 1992 election cycle. Accordingly this Office recommends that the Commission find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b, and close the file on MUR 3660.

6. MURs 3706, 3709, and 3710

These matters were all generated by complaints filed by William D. White of Pittsburgh, Pennsylvania.[10] In MUR 3706, White filed a complaint against Lynn Yeakel; the Lynn Yeakel for U.S. Senate Committee and Sidney Rosenblatt, as treasurer; Senator Arlen Specter; Citizens for Arlen Specter and Stephen J. Harmelin,

10. White claims to have been an independent candidate for United States Senator from Pennsylvania in the November 3, 1992 general election. See, e.g., Attachment F-1 at 2. However, White failed to file a Statement of Candidacy with the Commission for the 1992 election, and counsel for one of the respondents in these matters stated upon information and belief that White failed to qualify for the Pennsylvania ballot. Attachment F-2 at 2.

as treasurer;[11] WDUQ Radio of Pittsburgh; and Kevin Gavin, WDUQ's news director. The complaint alleges that WDUQ provided free air time to the Yeakel campaign, and that this constituted an illegal in-kind contribution. It also implies that Gavin, who is WDUQ's news director, personally contributed services to the Yeakel campaign by interviewing Yeakel during the broadcast produced with WDUQ's grant of free air time. Additionally, White alleges that WDUQ's coverage of Yeakel and Specter's participation in the League of Women Voters' "Citizens' Jury" program constituted an illegal in-kind contribution from WDUQ to both campaigns. Attachment F-1.

WDUQ's general manager, Judy Jankowski, averred in a sworn affidavit that the station made "free and essentially unrestricted time" available to all candidates for the U. S. Senate from Pennsylvania, including White. Attachment F-4 at 2. WDUQ's donation of air time was similar to that approved by the Commission in Advisory Opinion 1982-44, and to the donation of free newspaper space held to be within the media exemption in MUR 486 (cited in AO 1982-44). WDUQ's coverage of the League of Women Voters' "Citizens' Jury" appears to have been spot news coverage. Moreover, WDUQ is an FCC licensee; therefore, the broadcasts at issue appear to have been within WDUQ's legitimate press function. Additionally, WDUQ appears to be owned not by a party, committee or candidate, but by Duquesne University.

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11. Senator Specter was the Republican nominee for U. S. Senator from Pennsylvania in the 1992 general election, and Yeakel was the Democratic nominee. Senator Specter was re-elected, receiving 51 percent of the vote to Yeakel's 49 percent.

Attachment F-4 at 1. Accordingly, this Office recommends that the Commission find no reason to believe that WDUQ Radio or Kevin Gavin violated any provision of the Act with respect to MUR 3706. Because there appears to have been no prohibited contribution to accept, this Office further recommends that the Commission find no reason to believe that Lynn Yeakel, the Yeakel for Senate Committee or Sidney Rosenblatt, as treasurer, Senator Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer violated any provision of the Act with respect to MUR 3706 and close the file.

In MUR 3709, White filed a complaint against Yeakel, the Yeakel committee, and WPXI-TV of Pittsburgh. The complaint alleged that WPXI's hour-long broadcast of a "call-in" interview featuring Yeakel constituted an illegal in-kind contribution from WPXI to the Yeakel campaign. Attachment G-1. On December 2, 1992, White amended his complaint to name each of the program's advertisers as respondents, and, on January 8, 1993, White again amended his complaint to name as a respondent Willoughby Communications, an advertising agency that acted as purchasing agent for one of the advertisers.[12] The amendments alleged that

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12. The advertiser respondents in MUR 3709 are:

Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota

the advertisers' sponsorship of the program constituted illegal in-kind contributions to the Yeakel campaign. Attachments G-2 and G-3.

WPXI responds that the program about which White complains was a "regularly scheduled news program." Attachment G-4 at 1. Confirming this assertion, all of the advertiser respondents contend that they bought time on WPXI news programming generally, and had no knowledge (much less intent) that they were buying time on a broadcast featuring Yeakel. For instance, respondent Monro Muffler/Brake asserted that "one spot was ordered to run every other week from July 11 through October 3, 1992 in the WPXI Saturday morning 'news block' between 8 a.m. and 12 p.m." Attachment G-6. The specific placement of advertisements within that time period was apparently left up to WPXI.

Regularly scheduled news programs are protected by the media exemption. Moreover, WPXI is an FCC licensee and does not appear to be owned or controlled by a party, committee or candidate. Accordingly, it appears to be within the media exemption, and this Office recommends that the Commission find no reason to believe that WPXI-TV violated any provision of the Act with respect to MUR 3709.

As discussed <u>supra</u> at 6, non-political advertising on or sponsorship of material which qualifies for the media exemption is

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(Footnote 12 continued from previous page)
West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop

not prohibited by 2 U.S.C. § 441b, provided that the advertiser exercises no editorial control over the content of the exempt material. Because none of the advertiser respondents appeared to exercise editorial control over the content of WPXI's interview with Yeakel, this Office recommends that the Commission find no reason to believe that any of the advertiser respondents or Willoughby Communications violated any provision of the Act. Finally, because there appears to have been no prohibited in-kind contribution, this Office recommends that the Commission find no reason to believe that Lynn Yeakel or the Lynn Yeakel for Senate Committee, or Sidney Rosenblatt, as treasurer, violated any provision of the Act with respect to MUR 3709 and close the file.

In MUR 3710, White filed a complaint against Senator Specter, the Specter committee, and WPXI. The allegations were substantially the same as those involving Yeakel, the Yeakel committee, and WPXI in MUR 3709. Attachment H-1. However, unlike in MUR 3709, White did not name individual advertisers on the program as respondents. The allegations and responses in MUR 3710 are sufficiently similar to those in MUR 3709 for the same analysis to apply. Accordingly, this Office recommends that the Commission find no reason to believe that any respondents violated any provision of the Act with respect to MUR 3710 and close the file.

III. **RECOMMENDATIONS**

A. With respect to MUR 3483:

1. Find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee or J. Stanley Huckaby, as treasurer, violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

B. With respect to MUR 3605:

1. Find no reason to believe that WVOJ Radio violated 2 U.S.C. § 441b, and close the file with respect to WVOJ radio.

2. Find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

3. Approve the attached Factual and Legal Analysis.

4. Approve the appropriate letters.

C. With respect to MUR 3615:

1. Find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a).

2. Find reason to believe that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

3. Approve the attached Factual and Legal Analyses.

4. Approve the appropriate letters.

D. With respect to MUR 3624:

1. Find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, or J. Stanley Huckaby as treasurer of both committees, violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

E. With respect to MUR 3660:

1. Find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b.

2. Approve the appropriate letters.

3. Close the file.

F. <u>With respect to MUR 3706</u>:

1. Find no reason to believe that WDUQ Radio, Kevin Gavin, Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

G. <u>With respect to MUR 3709</u>:

1. Find no reason to believe that Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, WPXI-TV, Lawrence Convention Center, Monro Muffler/Brake, Welch Foods, Inc., Richardson-Vicks, Inc., MAACO, Quality Furniture Co., Edgar Snyder and Associates, Red Lobster Restaurants, International Paper Co., Turnpike Toyota, West Penn Power Co., Cinema World, Inc., Medic Alert, General Mills, Inc., Willi's Ski Shop, or Willoughby Communications violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

H. <u>With respect to MUR 3710</u>:

1. Find no reason to believe that Arlen Specter, Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, or WPXI-TV violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

Lawrence M. Noble
General Counsel

5/17/93
Date

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

93040945206

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3483
George Bush; Bush-Quayle '92)
Primary Committee and J. Stanley)
Huckaby, as treasurer;)
KXIC Radio;)
U.S. Small Business Administration)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 25, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3483:

1. Find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee or J. Stanley Huckaby, as treasurer, violated any provision of the Act.

2. Approve the letters as recommended in the General Counsel's report dated May 17, 1993.

3. Close the file.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision. Commissioner McDonald was not present at the time of the vote.

Attest:

5-26-93
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gerald B. Wetlaufer
51 Lakeview Place North
Iowa City, Iowa 52242

RE: MUR 3483

Dear Mr. Wetlaufer:

On May 25, 1993, the Federal Election Commission reviewed the allegations of your complaint dated March 6, 1992, and found that on the basis of the information provided in your complaint, there is no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated any provision of the Federal Election Campaign Act of 1971, as amended ("the Act") with respect to MUR 3483. Accordingly, on May 25, 1993, the Commission closed the file in this matter.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

93040945208

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

Bobby R. Burchfield, General Counsel
Bush-Quayle '92 Primary Committee, Inc.
228 South Washington Street; Suite 300
Alexandria, VA 22314

RE: MUR 3483
Bush-Quayle '92 Primary Committee, Inc. and
J. Stanley Huckaby, as treasurer

Dear Mr. Burchfield:

On March 20, 1992, the Federal Election Commission notified your clients, the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you on behalf of your client, that there is no reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated any provision of the Act with respect to MUR 3483. Accordingly, the Commission closed its file 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

Mr. George Bush
c/o Bush-Quayle '92 Primary Committee, Inc.
228 South Washington Street Suite 300
Alexandria, VA 22314

RE: MUR 3483
George Bush

Dear Mr. Bush:

On March 20, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, that there is no reason to believe you violated any provision of the Act with respect to MUR 3483. Accordingly, the Commission closed its file 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.

Sincerely,

Lawrence M. Noble
General Counsel

LGL

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

Mona K. Mitnick
Chief Counsel for Administrative Law
U. S. Small Business Administration
409 3rd Street, S.W.
Washington, D.C. 20416

RE: MUR 3483
U. S. Small Business Administration

Dear Ms. Mitnick:

On March 20, 1992, the Federal Election Commission notified the U. S. Small Business Administration of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that the U. S. Small Business Administration violated any provision of the Act with respect to MUR 3483. Accordingly, the Commission closed its file 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

Clifford M. Harrington, Esquire
Fisher, Wayland, Cooper and Leader
1255 23rd Street, N.W. Suite 800
Washington, DC 20037-1170

RE: MUR 3483
KXIC Radio

Dear Mr. Harrington:

On March 20, 1992, the Federal Election Commission notified your client, KXIC Radio, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe KXIC Radio violated any provision of the Act with respect to MUR 3483. Accordingly, the Commission closed its file 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.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3483

DATE FILMED 6/23/93 CAMERA NO. 4

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