



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

THIS IS THE BEGINNING OF MUR # 3840

DATE FILMED 5-25-91 CAMERA NO. 2

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AR-93-43

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FEDER
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December 1, 1993

MEMORANDUM M. NOBLE
COUNSEL

TO:

JOHN C. SUEINA
STAFF DIRECTOR

THRO

ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: NEW YORK '92 HOST COMMITTEE, INC. - MATTER REFERABLE

On November 10, 1993, the Commission approved the final audit report on the New York '92 Host Committee, Inc. In accordance with the Commission's approved materiality thresholds, Exhibit A. is being referred.

This matter concerns the receipt of apparent prohibited contributions. In both instances the contributing business entities/organizations were located outside the Consolidated Metropolitan Statistical Area (CMSA).

It is the opinion of the Audit staff that, based on the Committee's response which included refunding the prohibited contributions, no further action is warranted.

Should you have any questions, please contact Brian Dehoff or Tom Nurthen at 219-3720.

Attachment:

Exhibit A. - Apparent Prohibited Contributions

AR-93-43

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 1, 1993

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: NEW YORK '92 HOST COMMITTEE, INC. - MATTER REFERABLE

On November 10, 1993, the Commission approved the final audit report on the New York '92 Host Committee, Inc. In accordance with the Commission's approved materiality thresholds, Exhibit A. is being referred.

This matter concerns the receipt of apparent prohibited contributions. In both instances the contributing business entities/organizations were located outside the Consolidated Metropolitan Statistical Area (CMSA).

It is the opinion of the Audit staff that, based on the Committee's response which included refunding the prohibited contributions, no further action is warranted.

Should you have any questions, please contact Brian Dehoff or Tom Nurthen at 219-3720.

Attachment:
Exhibit A. - Apparent Prohibited Contributions

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Apparent Prohibited Contributions

Section 9008.7(d)(2)(i) of Title 11 of the Code of Federal Regulations states, in part, that local businesses, excluding banks, local municipal corporations and government agencies, local labor organizations and individuals may donate funds or make in-kind contributions to a host committee for purposes set forth at 11 CFR 9008.7(d)(2)(iii).

Section 9008.7(d)(2)(iv) of Title 11 of the Code of Federal Regulations states that any business, municipal corporation, agency or labor organization within the Metropolitan Statistical Area (MSA)^{1/} of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MSA is not local. This presumption may be rebutted by showing that the volume of business in an area lying outside the MSA would be directly affected by the presence of the convention.

The Audit staff's review identified 2 contributions, totaling \$35,500, that appear to have been received from business entities/organizations outside of the CMSA.

- The Committee received a \$35,000 contribution from the Foundation of Jewish Philanthropics of Greater Miami (the Foundation).

The Foundation is based in Miami, Florida. No evidence was provided to demonstrate that it has offices within the CMSA. Accordingly, it is the opinion of the Audit staff that the contribution is prohibited pursuant to 11 C.F.R. §9008.7(d)(2)(i).

The Committee stated that it had solicited a contribution from an individual who subsequently made a contribution by check drawn on the above mentioned Foundation. Further, the Committee provided documentation that it had refunded \$35,000 to the Foundation on November 12, 1992.

^{1/} In metropolitan complexes with a population greater than one million people, the MSA is comprised of a Primary Metropolitan Statistical Area (PMSA) and a Consolidated Metropolitan Statistical Area (CMSA). For the purposes of this review, the Audit staff used the CMSA to determine whether a business was local or not. The CMSA of New York City includes the surrounding counties (e.g., Bronx County, Queens County, etc.) along with certain areas in Connecticut and New Jersey.

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- The Committee received a \$500 contribution from Steptoe & Johnson, a law firm located in Washington, DC. It has no offices located within the CMSA of the convention city.

The Committee stated that the contribution came from 88 partners of Steptoe & Johnson. Further, the Committee provided documentation from Steptoe & Johnson that states the contribution "was made from regular partnership funds, of which no individual partner's share exceeded \$100. There are no professional corporations among the partners."

It should be noted that 11 C.F.R. 100.1(e) states that a contribution by a partnership shall be attributed to the partnership and each partner.

It is our opinion that the Regulations with respect to contributions from partnerships are clear. As a result, since Steptoe & Johnson is not located within the CMSA and does not maintain offices within the CMSA, it cannot make a contribution to the Committee.

In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the contributions are permissible or refund the \$500 to the contributor and provide evidence of such refunds within 30 days of service of the report.

In response, the Committee provided the Audit staff with a copy of the refund check issued to Steptoe & Johnson.

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 3840

STAFF MEMBER: James S. Portnoy

SOURCE: INTERNALLY GENERATED

RESPONDENTS: New York '92 Host Committee, Inc., and
Henry Miller, as Treasurer
Foundation of Jewish Philanthropics of Greater
Miami Federation, Inc.
Steptoe & Johnson

RELEVANT STATUTES: 26 U.S.C. § 9009(b)
11 C.F.R. § 100.1(e)
11 C.F.R. § 103.3(b)(2)
11 C.F.R. § 9008.7(d)(2)(i)
11 C.F.R. § 9008.7(d)(2)(iv)
11 C.F.R. § 9008.9

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the New York '92 Host Committee, Inc. and Henry Miller, as treasurer, (the "Host Committee") undertaken in accordance with 11 C.F.R. § 9008.9. The Audit Division's referral materials are attached. See Attachment 1. The Host Committee's primary objective was to encourage commerce in New York City during the 1992 Democratic National Convention and to project a favorable image of the city to convention attendees. See 11 C.F.R. § 9008.7(d)(1).

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II. FACTUAL AND LEGAL ANALYSIS

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The Commission's regulations provide that local businesses, excluding banks, local municipal corporations and government agencies, local labor organizations and individuals may donate funds or make in-kind contributions to a host committee for the purposes set forth at 11 C.F.R. § 9008.7(d)(2)(iii). 11 C.F.R. § 9008.7(d)(2)(i). The regulations further provide that any business, municipal corporation, agency or labor organization within the Metropolitan Statistical Area ("MSA") of the convention city shall be considered local. 11 C.F.R. § 9008.7(d)(2)(iv). In addition, the regulations create a rebuttable presumption that any such entity located outside the MSA is not local. 11 C.F.R. § 9008.7(d)(2)(iv). This presumption may be rebutted by showing that the volume of business in an area lying outside the MSA would be directly affected by the presence of the convention. Id.

The Host Committee received two contributions, totaling \$35,500, that appear to have been from entities located outside the MSA of New York City.^{1/} See 11 C.F.R. § 9008.7(d)(2). First, on July 23, 1992, the Host Committee received a \$35,000 contribution from the Foundation of Jewish Philanthropics of Greater Miami Federation, Inc. ("the Foundation"). Second, on August 8, 1992, the Host Committee received a \$500 contribution from Steptoe & Johnson, a law firm located in Washington, D.C.

^{1/} For the purposes of this audit, the MSA of New York City included the surrounding counties of the city (i.e., Bronx County, Queens County, etc.) as well as certain areas in Connecticut and New Jersey.

With respect to the first contribution, there is no evidence that the Foundation -- which is based in Miami, Florida -- had offices within the New York City MSA. In response to the Interim Audit Report, the Host Committee provided information indicating that it had not solicited a contribution from the Foundation, but rather had solicited a contribution from an individual who made a contribution drawn from the Foundation's checking account. Nonetheless, the Host Committee refunded the \$35,000 contribution to the Foundation on November 12, 1992.

With respect to the second contribution, the evidence similarly demonstrates that Steptoe & Johnson did not have an office within the New York City MSA. In response to the Interim Audit Report, the Host Committee claimed that the contribution actually came from individuals -- the 88 partners of Steptoe & Johnson. In particular, the Host Committee stated that the contribution was made "from regular partnership funds, of which no individual partner's share exceeded \$100." The Host Committee nevertheless refunded the contribution made by Steptoe & Johnson on June 25, 1993.

Because the Foundation and Steptoe & Johnson are not located within the MSA of New York City and do not maintain offices within the MSA, they were not permitted to contribute to the Host Committee. 11 C.F.R. § 9008.7(d)(2)(i). This Office therefore recommends that the Commission find reason to believe that the Foundation and Steptoe & Johnson violated 11 C.F.R. § 9008.7(d)(2)(i). We further recommend that the Commission find reason to believe that the Host Committee and Henry Miller,

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as Treasurer, accepted contributions from the two entities in violation of 11 C.F.R. § 9008.7(d)(2)(i).

Although this matter was referred to this Office consistent with the Materiality Thresholds for 1992 Title 26 Presidential Audits, the Host Committee refunded the impermissible contributions as recommended in the Interim Audit Report.^{2/} Accordingly, based on the circumstances of this case and consistent with the proper ordering of the Commission's resources and priorities, we recommend that the Commission take no further action with respect to the Host Committee, the Foundation and Steptoe & Johnson (collectively, "the Respondents"). See, e.g., Heckler v. Chaney, 470 U.S. 821, 837-38 (1985). Nonetheless, if the Commission adopts this recommendation, this Office will send admonishment letters to the Respondents emphasizing the importance of adhering to the Presidential Election Campaign Fund Act and the Commission's regulations at 11 C.F.R. § 9008.7(d)(2).

III. RECOMMENDATIONS

1. Find reason to believe that the Foundation of Jewish Philanthropics of Greater Miami Federation, Inc. violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.
2. Find reason to believe that Steptoe & Johnson violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.
3. Find reason to believe that the New York '92 Host

^{2/} Contributions whose legality is not in question when received and deposited, must be refunded within 30 days after their illegality is discovered. 11 C.F.R. § 103.3(b)(2); see also Explanation and Justification for 11 C.F.R. § 103.3(b), 52 Fed. Reg. 760, 768-9 (Jan. 9, 1987).

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Committee, Inc. and Henry Miller, as Treasurer, violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.

4. Close the file.
5. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

4/26/94
Date

BY:

Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachment

1. Referral Materials

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

New York '92 Host Committee, Inc.
and Henry Miller, as Treasurer;
Foundation of Jewish Philanthropics
of Greater Miami Federation, Inc.;
Miami Federation, Inc.;
Steptoe and Johnson.

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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 3, 1994, the Commission decided by a vote of 4-0 to take the following actions in MUR 3840:

1. Find reason to believe that the Foundation of Jewish Philanthropics of Greater Miami Federation, Inc. violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.
2. Find reason to believe that Steptoe & Johnson violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.
3. Find reason to believe that the New York '92 Host Committee, Inc. and Henry Miller, as Treasurer, violated 11 C.F.R. § 9008.7(d)(2)(i), but take no further action.

(continued)

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4. Close the file.
5. Approve the appropriate letters, as recommended in the General Counsel's Report dated April 26, 1994.

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

Attest:

5-4-94
Date

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

Received in the Secretariat: Tues., April 26, 1994 4:32 p.m.
Circulated to the Commission: Thurs., April 28, 1994 11:00 a.m.
Deadline for vote: Tues., May 03, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 17, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Foundation of Jewish Philanthropics of
Greater Miami Federation, Inc.
4200 Biscayne Boulevard
Miami, FL 33137

RE: MUR 3840

Dear Sir/Madam:

On May 3, 1994, the Federal Election Commission found reason to believe that the Foundation of Jewish Philanthropics of Greater Miami Federation, Inc. ("the Foundation") violated 11 C.F.R. § 9008.7(d)(2)(i), a provision of the Federal Election Commission's regulations. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The First General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that 11 C.F.R. § 9008.7(d)(2)(i) prohibits entities located outside the Metropolitan Statistical Area of a convention city from making contributions to a host committee. See 11 C.F.R. § 9008.7(d)(1). Therefore, you should take steps to ensure that this activity does not occur in the future.

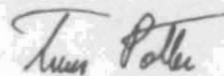
The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any 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.

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Letter to The Foundation of Jewish Philanthropies
of Greater Miami Federation, Inc.
Page 2

If you have any questions, please contact James S. Portnoy,
the attorney assigned to this matter, at (800)424-9530 or (202)
219-3690.

For the Commission,


Trevor Potter
Chairman

Enclosure
First General Counsel's Report

94030974851



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 17, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard K. Willard, Partner
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 3840

Dear Mr. Willard:

On May 3, 1994, the Federal Election Commission found reason to believe that Steptoe & Johnson violated 11 C.F.R. § 9008.7(d)(2)(i), a provision of the Federal Election Commission's regulations. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The First General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that 11 C.F.R. § 9008.7(d)(2)(i) prohibits entities located outside the Metropolitan Statistical Area of a convention city from making contributions to a host committee. See 11 C.F.R. § 9008.7(d)(1). Therefore, you should take steps to ensure that this activity does not occur in the future.

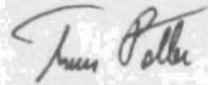
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Letter to Richard K. Willard
Page 2

If you have any questions, please contact James S. Portnoy,
the attorney assigned to this matter, at (800)424-9530 or (202)
219-3690.

For the Commission,


Trevor Potter
Chairman

Enclosure
First General Counsel's Report

94030974853



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 17, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Henry Miller, Treasurer
New York '92 Host Committee, Inc.
Room 525
51 Chambers Street
New York, NY 10007

RE: MUR 3840

Dear Mr. Miller:

On May 3, 1994, the Federal Election Commission found reason to believe that the New York '92 Host Committee ("Host Committee") and you, as treasurer, violated 11 C.F.R. § 9008.7(d)(2)(i), a provision of the Federal Election Commission's regulations. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The First General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the acceptance of contributions from entities located outside the Metropolitan Statistical Area of a convention city is a violation of 11 C.F.R. § 9008.7(d)(2)(i). Therefore, you should take steps to ensure that this activity does not occur in the future.

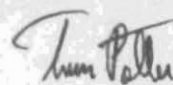
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Letter to Henry Miller
Page 2

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For the Commission,


Trevor Potter
Chairman

Enclosure
First General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3840

DATE FILMED 5-25-91 CAMERA NO. 2

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