FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4176

DATE FILMED 4-16-97 CAMERA NO. 1

CAMERAMAN Jon N

9704379001117

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK005892

January 13, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: THE TSONGAS COMMITTEE, INC. - REFERRAL MATTERS (MUR 4176)

On December 15, 1994, the Commission approved the final audit report on the Tsongas Committee, Inc.. The final audit report was released to the public on December 28, 1994. The attached findings from the final audit report are being referred to your office:

Finding III.A. - Apparent Excessive Contributions

Finding III.B. - Misstatement of Financial Activity

Finding IV.B. - Press and U.S. Secret Service Billings

Finding III.A., Apparent Excessive Contributions, consists of excessive contributions as a result of loans, excessive contributions from individuals other than loans, excessive contributions from staff advances, and an excessive contribution from a partnership under 11 CFR §116.3.

The misstatement of financial activity at Finding III.B., relates to 1991. The Committee filed amended disclosure reports materially correcting all of the misstatements with the exception of the activity in the Andover Account. That activity is of sufficient size to warrant a referral of this matter.

With respect to Finding IV.B., the interim audit report recommended that the Committee make refunds to the Press and U.S. Secret Service. There is no materiality threshold for this type of finding. However, given that the Committee did not comply with our recommendation, we feel that this matter should be referred to your office.

9704379011 8

All workpapers and related documentation are available for review in the Audit Division. should you have any questions, please contact Joe Swearingen or Joe Stoltz at 219-3720.

Attachments as stated

9704370011 9

$1,100 (see Finding III.A.). Committee representatives have amended the Statement of Organization to disclose this account.

The recommendations relating to the activity in these accounts is discussed further in Findings 1III.A., III.B., IV.C., and IV.D. below.

III. Findings and Recommendations - Non Repayment Matters

A. Apparent Excessive Contributions

Section 441a(a) of Title 2 of the United States Code states, in relevant part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal Office which, in the aggregate, exceed $1,000.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

Section 110.1(b)(6) of Title 11 of the Code of Federal Regulations states, in part, that a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee, or to an agent of the political committee, shall be considered to be made on the date of the postmark.

Section 110.1(e) of Title 11 of the Code of Federal Regulations states, in part, that a contribution by a partnership should be attributed to the partnership and each partner, and that a contribution by a partnership shall not exceed the limitations on contribution in 11 CFR 110.1(b).

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR §100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

9704379013C

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR §§110.1(b) and 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Sections 110.4(b)(1)(i) and (2) of Title 11 of the Code of Federal Regulations state, in part, that no person shall make a contribution in the name of another. Examples of contributions in the name of another include giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made. Making a contribution of money or

9704379011

anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

Section 432(c) of Title 2 of the United State Code, states, in part, that the treasurer of a political committee shall keep an account of all contributions received by or on behalf of such political committee, the name and address of any person who makes any contribution in excess of $50, together with the date and amount of such contribution by any person; and the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution.

Section 104.14(b) of Title 11 of the Code of Federal Regulations states, in part, that each political committee required to file any report under this subchapter shall maintain records relevant to such reports, including bank records, with respect to the matters required to be reported including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness.

1. Loans From Individuals

As noted in Section II.1.a., loans from eight individuals were negotiated by Mr. Rizzo. These individuals made 16 loans totaling $794,000 (see Attachment VII). Four of the 16 loans, totaling $280,000, were deposited into accounts of Mr. Rizzo and the remainder was deposited into the Andover Account. As noted previously, only three of the loans have been completely or partially repaid.

Furthermore, four of the eight individuals who made loans to the Committee made additional $1,000 contributions to the Committee. Another lender made contributions totaling $750. Therefore, it appears that the Committee has received excessive contributions from eight individuals totaling $790,750 ($794,000 in loans - $3,250 in available contribution limitations).

In the interim audit report, the Audit staff recommended that the Committee provide information to show that the aforementioned transactions did not constitute impermissible excessive contributions totaling $790,750. Absent such showing, it was recommended that the Committee repay these individuals $725,750 ($790,750 - $65,000 previously repaid).

If funds were not available to make such repayments, it was recommended that the Committee disclose the amounts as loans owed by the Committee on Schedule C-P.

9704379012 2

In response to the interim audit report, Counsel for the Committee states that the loans solicited by Mr. Rizzo are not Committee obligations for the following reasons:

> "Regarding the sizable loans obtained by Mr. Rizzo from various individuals, the superseding indictment charged that 'defendant Rizzo fraudulently obtained loans in the amount of $794,000 which he falsely represented to the individual lenders would be to the benefit of the Committee.' Mr. Rizzo has consistently stated that these loans were intended to be his individual and personal obligations. (Rizzo states 'they were loans that were made that I told each of the individuals that I would be responsible for, and I still feel I am responsible for, the repayment'). His attorney stated to the sentencing court that Mr. Rizzo 'knew [the loans] could never be used for the Tsongas campaign.' Apparently he also told the Commission the same under oath. In imputing these loans to the Tsongas Committee, the Audit staff apparently has rejected these admissions without explanation.
>
> "Mr. Rizzo was acting beyond the scope of any conceivable agency in soliciting such loans for the Committee. Acts within the scope of an agent's employment include only those 'acts done on behalf of a corporation and directly related to the performance of the type of duties the employee has general authority to perform.' Mr. Rizzo had no actual authority to solicit loans from contributors in the name of the Tsongas Committee, nor could he be held even to have apparent authority to do so, since such solicitations are in direct violation of federal election law. Moreover, the sentencing transcript details the bizarre web of deception employed by Mr. Rizzo in securing these loans. Mr. Rizzo was engaged in activity planned by him for his own benefit when he solicited the loans, both the Committee and the lenders were victimized by this activity, and he thus clearly was acting outside the scope of his agency. ('The reasons he wanted the money are also aggravating factors. He basically chose to victimize Paul Tsongas' friends so that he could pay his own friends at the bank').
>
> "Because Mr. Rizzo was not acting within the scope of his agency in soliciting the illegal loans, the Committee never 'received' the proceeds of the loans and, needless to say, never deposited the loans into a Committee account. For this reason, it is the Committee's position that it did

97043790123

not receive 'excessive contributions' in the amount of the loans. More significantly, and in full accord with the Committee's position, the federal court has ordered Mr. Rizzo to repay these loans to the lenders, and not to the Committee. It is inappropriate for the Audit staff to expect the Committee to receive the loan proceeds from Mr. Rizzo or to repay them to the lenders.

"Although the Committee strongly believes that its position is correct with respect to all of the loans, it even more emphatically takes issue with the Audit staff's conclusion that checks made out to Mr. Rizzo personally or to his business are somehow contributions to the Committee. No suggestion is made that these loans were somehow in-kind contributions or payment of Committee obligations to Mr. Rizzo. Nor is there any basis to find a political contribution solely because of the purported contributor's intent if the contribution did not get delivered to a political committee, to a committee's agent acting within the scope of agency, or otherwise used by the recipient for purpose regulated by FECA. By way of illustration, if a Tsongas supporter announced on a street corner that she intended to contribute $50 in cash to the candidate, and she then was mugged and her wallet stolen, she has not thereby made a political contribution merely because her money was taken in response to a stated desire to assist a candidate."

The Audit staff does not find the Committee's arguments to be persuasive. As noted previously at Section II.A.7.a., Mr. Rizzo is considered an agent of the Committee. Contrary to the Committee's contentions, Mr. Rizzo's receipt of the loan checks from the lenders constituted receipt by the Committee because Mr. Rizzo was a Committee agent with authority to accept contributions. It is immaterial that Mr. Rizzo converted most of the contributions for his personal use. Rather than interrupting the conveyance of the contributions to the Committee, Mr. Rizzo embezzled the funds after he had accepted them as an agent of the Committee.

In addition, it appears that Mr. Kanin and Senator Tsongas were aware of at least one of the loans and Mr. Kanin appears to have been involved in the soliciting of another loan. This would indicate that Mr. Rizzo had been given the authority to solicit loans on the Committee's behalf and was not outside the scope of his agency. Although the Committee was not aware of all the loans, solicitation of loans does appear to be in Mr. Rizzo's dominion as an agent of the Committee. With respect to the loans which were not made payable to the Committee, it appears that Mr. Kanin was at least initially involved in the solicitation of one

97004379012 4

of the Trudeau loans and the evidence indicates that Mr. Rizzo solicited all of these loans on behalf of the Committee even though the money was not forwarded to the Committee's main operating account.

Regardless of Mr. Rizzo's recent statements concerning his perceived personal liability to repay the loans, testimony from each of the lenders establishes that the clear understanding when the loans were made was that the money was for the benefit of the Committee. As noted above, Mr. Rizzo solicited each loan ostensibly on behalf of the Committee, and the lenders relied on his authority. It is unlikely that the lenders, many of whom did not know Mr. Rizzo, would make personal loans to him of such magnitude.

With respect to the loans not made payable to the Committee, the clear intent was to loan the Committee funds by routing it through another individual (Mr. Rizzo) in an apparent attempt at circumventing contribution limitations as they were explained by Mr. Rizzo. Also, the Committee's analogy is not on point. If the same individual had given the $50 to a well recognized fundraising agent of the Committee, and that agent misappropriated the funds, the contributor has made a contribution, and the Committee through its agent received the contribution in accordance with 11 CFR §110.1(b)(6) even though the funds were stolen prior to the Committee having access to them.

Therefore it is concluded that the loans from the eight individuals constitute excessive contributions to the Committee, solicited by Committee agents and received on behalf of the Committee by a Committee agent. Such loans are required to be disclosed as (1) contributions on Schedule A-P, (2) debts owed on Schedule C-P, and (3) when repaid, as loan repayments on Schedules B-P and C-P.

2. Excessive Contributions from Individuals

The Commission notified the Committee by letter dated June 2, 1992, that a sampling technique would be used to determine the amount of excessive contributions received by the Committee. That letter states, in part, "Commission regulations provide committees with 30 days in which to refund contributions which appear to be prohibited, and 60 days in which to seek the reattributions, redesignation or refund of excessive contributions. 11 CFR 103.3(b)(1), (2), and (3). Contributions resolved by committees outside these time periods will not be considered mitigated violations. The Commission will no longer recognize any untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility or after the date of receipt of this letter, whichever is later. After this deadline, the Commission will request that all unresolved prohibited or excessive contributions be paid to the United States Treasury."

9704379025

Our review of contributions from individuals identified apparent unresolved excessive contributions totaling $71,525. This amount was derived from a comprehensive review of the two undisclosed bank accounts (see Section II.); an extensive review of contribution checks from a partnership; comprehensive reviews of selected coded transactions from the Committee's receipts data base; and a sample review of the remaining contributions from individuals. At or subsequent to the exit conference, the Committee was provided with various schedules detailing the apparent excessive contributions, as well as relevant check copies from the sample review. The following is a summary of this excessive amount.

Recap of Excessive Contributions

Type of Review	Total amount of excessive contributions
Texas Account	$ 1,100
Andover Account	29,314
Partnership Contribution	21,500
"Refund" Coded Contributions:	
Not Refunded or Not Cleared Through Bank	1,330
Untimely refunded contributions	7,312
Excessive Contributors on Data Base	1,550
Dollar Value Projection of errors from the sample	9,419
Total Amount of Unresolved Excessive Contributions Payable to the United States Treasury	$71,525

In the interim audit report, the Audit staff recommended that the Committee:

- Provide evidence that the contributions in question are not excessive;

- In regard to the two refunded checks written by the Committee which had not cleared the bank, provide evidence of these funds clearing the bank (i.e., copies of the front and back of the negotiated refund checks);

- With respect to the contributions drawn on the partnership account, provide evidence regarding the partnership's

97043790126

payment structure to show that the funds contributed were within exclusive control of the individual partners;

- Absent any evidence that demonstrates that the above mentioned contributions are not excessive, make a payment to the United States Treasury in the amount of $71,525.

The discussion of each area of excessive contributions and the Committee's response to the interim audit report concerning each follows.

a. Comprehensive Reviews

i. Undisclosed Bank Accounts

As discussed above, two undisclosed bank accounts were reviewed during the audit. Our review of the Texas Account identified 2 excessive contributions totaling $1,100. The review of the Andover Account identified 42 contributors (in addition to the lenders discussed above) who exceeded the contribution limitation. The excessive portions of these contributions total $29,314. Therefore, the total amount of apparent excessive contributions from the two undisclosed bank accounts is $30,414 [$29,314 + $1,100].

The Committee stated that it would recognize the Texas Account and file an amended statement of organization. As discussed in Section II., the Committee disavows the Andover Account. However, it has demanded that Mr. Rizzo forward the amount of contributions from individuals. Therefore it appears that the Committee had acknowledged these contributions as Committee funds.

In response to the interim audit report, Counsel for the Committee states that the Committee does not contest the finding that $1,100 of excessive contributions were made to the Committee's Texas Account. It is also noted that the Committee has filed an amended Statement of Organization to recognize the Texas Account.

With respect to the Andover Account, Counsel for the Committee states in response to the interim audit report that the Andover Account is not an account of the Committee. The Committee does not contend that the Federal Election Campaign Act ("FECA") is irrelevant to the Andover Account. The Committee acknowledges that 2 U.S.C. §432(b) and 11 CFR §102.8 were violated by Mr. Rizzo with respect to forwarding contributions and contributor identifying information to the treasurer within ten days of his receipt.

The Committee has sent a letter to Mr. Rizzo demanding that he forward the amount of all contributions to the treasurer. Counsel states that to date no payment has been received and that the Committee considers the amount to be

97043790127

uncollectible. Counsel further states that it is the Committee's position that it never received the $29,314 in alleged excessive contributions deposited into the Andover Account and that if the contributions had been forwarded to the treasurer in compliance with FECA, they would have been refunded in a timely manner to the contributors.

As discussed previously, the Audit staff's position is that the Andover Account is an account of the Committee. However, that dispute aside, the contributions from individuals deposited into the Andover Account were, for the most part, permissible contributions received by the Committee's chief fundraising agent. The fact that some of the funds were misappropriated before the Committee could apply them to a campaign purpose does not alter the fact that they were received by the Committee through its authorized fundraising agent. It also does not change the fact that a portion of the contributions were in excess of contribution limitations. It is the Audit staff's opinion that these moneys were received by the Committee and result in the excessive contributions noted above. The fact that the money was not forwarded to the Committee's main operating account does not mean that the Committee did not receive these excessive contributions.

ii. Partnership Contribution

We reviewed contributions from a Boston law firm in which the candidate is a partner. Our review identified 25 contributions totaling $22,500 made on partnership checks, all drawn from the same account. Since partnership contributions are limited to $1,000, an excessive contribution of $21,500 results.

At the exit conference, the Committee stated that they believed these contributions were made by individuals. In support of this contention, the Committee provided a letter from the executive director of the firm stating, in part:

> "... all checks drawn on accounts of [the firm] as a political contribution to the Tsongas Committee, Inc. were done so at the direction of the individual partners of the firm. These contributions are deducted from the specific Partner's net income distribution."

The Committee also provided 23 additional documentation letters from the individuals to support the assertion that the contributions are drawn on the partnership account but represent the contributor's personal funds. However, the regulations state that a contribution by a partner on a partnership check shall be attributed to the partnership and to the partner. Since all the contributions are drawn on partnership

9704379012 8

checks from the same account, the contributions must be attributed to the partnership, as well as each individual partner, which results in an excessive contribution from the partnership.

In response to the interim audit report, the Committee provided a letter from the Executive Director of the law firm as clarification of the firm's payment structure. This letter states, in part, that "all checks drawn...as political contributions to the Tsongas Committee, Inc. were done so at the written direction of the individual partners of the firm who chose to make contributions. These contributions were deducted from the specific Partner's individual net income distribution.

"Throughout the fiscal year the law firm distributes only eighty percent of the profits earned by the equity partners. Twenty percent is held back and is distributed at the end of the fiscal year. Accordingly, the law firm held funds allocable to each equity partner from which specific political contributions were made. One semi-retired Partner, who was paid one hundred percent of his fixed compensation monthly, contributed $500 which was deducted from a year end bonus."

Further, Committee Counsel states that since the early days of the Commission, contributions from "non-repayable drawing accounts" have been recognized as lawful individual contributions.12/ The Committee thus contends that the contributions in question were not contributions "by a partnership."

The Notice referred to by the Committee dealt with funds contributed from corporate non-reimbursable drawing accounts. The Regulations make a distinction between corporate and partnership contributions and the respective treatment. In addition, the Committee response refers to written direction by the individual partners. However, documentation to support these written authorizations was not provided to support this contention. Also, the response does not clarify whether the partnership places any restrictions on partners' deductions from the firm accounts or whether the net income distributions are ever repayable to the partnership. Finally, there is no indication given that the partners are able to draw against the 20% in profits that are held back by the partnership prior to the end of the year.

The Committee has not provided evidence to demonstrate that the funds contributed were within the exclusive control of the individual partners. Although the contributions should be attributed to the individual partners, the regulations call for the contributions to also be attributed to

---

12/ The Committee refers to the Notice to All Candidates and Committees (Aug. 28, 1978).

97043790129

the partnership which results in the excessive contribution noted above.

iii. Selected Codes on the Committee's Receipts Database

The Committee's receipts database utilized a coding system with respect to contributions from individuals. A "P" coded contribution indicated the contribution was for the primary election. A "B" coded contribution indicated an insufficient funds check was written by a contributor. An "R" coded contribution was to indicate a refund was warranted. However, as noted below, refunds were not made for all of the "R" coded transactions.

A review was performed on the "R" coded contributions. It was determined that the contributions were coded "R" because they resulted in either excessive or prohibited contributions. Our review was designed to determine if the contribution refunds were made and if so, made timely. The review identified 34 contributions totaling $8,642 which on their face or in the aggregate exceeded the $1,000 contribution limitation.

Included among these 34 contributions are 27 totaling $7,312 that the Committee refunded on June 17 and 18, 1992. None of these 27 refunds were made timely. As noted above, the Commission's letter dated June 2, 1992, stated, in part, "The Commission will no longer recognize any untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility [May 18, 1992] or after the date of receipt of this letter [June 8, 1992], whichever is later."

After being informed of this matter, the Committee provided the following response:

> "The committee interpretation of untimely refunds was the later of 60 days following a date of candidate's ineligibility or 60 days after the receipt of the letter. In this context the subject refunds were timely. After review of the letter with Mr. Swearingen, I understand our interpretation was based on a misleading explanation of the time limits in the June 2 letter. I feel and hope the committee will not be found in violation of this regulation based on the misinterpretation of this misleading letter."

These contributions are included among those requiring a payment to the U.S. Treasury.

The remaining 7 excessive contributions coded "R" include 5 for which refund checks were not issued by the Committee, and 2 where refund checks were issued but had not

97043790013C

cleared the bank as of July 31, 1992. The excessive portions of these contributions total $1,330.

In addition to the "R" codes, the Audit staff identified 6 contributors on the receipts database which exceeded the contribution limitation by $1,550. These contributors were identified by totaling contributions for all individuals and identifying those contributors whose contributions totaled more than $1,000.

In response to the interim audit report, Counsel for the Committee stated the Committee does not contest the six excessive contributions which were identified from the receipts data base. With respect to the seven excessive contributions coded "R", the Committee provided a photocopy of a canceled refund check of $50 which had been issued on June 17, 1992 but was not negotiated until after completion of fieldwork. Counsel states that subject to modification for this item, the Committee does not contest the remaining excessives coded "R" but not refunded. Although the Audit staff agrees that the excessive contribution has been refunded, it is noted that the refund check was issued after the Committee's receipt of the letter from the Commission dated June 2, 1992. Therefore, the amount of this excessive contribution ($50) would still be payable to the U.S. Treasury along with the 27 items totaling $7,312 which are previously noted.

With respect to the excessive contributions which were refunded by the Committee after receipt of the June 2, 1992 letter, Counsel for the Committee in response to the interim audit report stated that the Committee contested these excessive contributions for three reasons. First, the Committee claims that it was confused by the following wording in the letter:

> "The Commission will no longer recognize any untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility or after the date of receipt of this letter, whichever is later."

The Committee further states that it reasonably interpreted this letter to mean that untimely refunds would not be recognized more than 60 days following the later of the date of ineligibility or the date of receipt of the letter [August 5, 1992] and accordingly certain refunds were made on June 17 and 18. The Committee submits that given these unique circumstances, these refunds should not be disregarded as the Audit staff proposes.

Second, the Committee submits that it should not be required to pay these amounts twice -- once to the contributors and once again to the Treasury. The Committee

97043790131

contends that, although the Commission may choose at its discretion not to consider the refunds as a mitigating factor in any ensuing enforcement proceeding, requiring a dollar-for-dollar payment to the Treasury is purely punitive and inconsistent with both the established enforcement process for FECA violations and the enumerated bases for a repayment finding.13/

Finally, the Committee submits that even if the Commission possessed the statutory authority to perform an "end-run around" the enforcement process and assess such a penalty in the context of the audit process, it is inappropriate to invoke such a new principle in an informal letter to a committee, rather than through recognized rulemaking channels.

In the Audit staff's opinion, the Committee's interpretation of the Commission's June 2, 1992, letter does not comport with the published regulations. The Committee is arguing that a reasonable reading of the Commission's letter would allow the Committee 60 days beyond the receipt of the letter to timely refund contributions which, according to the plain language of the regulation, should have been refunded before the letter was mailed. The Audit staff did not consider this a reasonable reading of the Commission's letter.

With respect to the contention that they should not be required to pay the amounts twice, the Committee chose to make the refunds after being notified by the Commission that such refunds would not be recognized. Thus, it was the Committee's choice "to pay the amount twice."

The Committee also argues that it is inappropriate to invoke a new principle in an informal letter to the Committee rather than through rulemaking channels. Agencies are required to comply with the Administrative Procedures Act's notice and comment provisions for "legislative rules" it issues. However, an exemption from these requirements is created for "interpretive rules, general statements of policy, or rules of agency organization, procedure or practice." An agency makes a general policy statement if the announcement either acts prospectively or leaves the agency and its decision-makers free to exercise discretion. The 1992 letter to presidential committees falls within the interpretive rule exemption. It does not substantially alter the Committee's rights or interests. Rather, it is interpreting a current regulation. Section 9038.1(a)(2) of

---

13/ The Committee incorrectly refers to the disgorgement of these funds to the U.S. Treasury as a "repayment" which would be governed by 11 CFR §9038.2. Rather, the payment to the Treasury is the only method of removing the impermissible funds from the Committee's accounts, once the regulatory time periods recognized by the Commission have expired.

9704379013 2

Title 11 of the Code of Federal Regulations allows the Commission to conduct examinations and audits "as it deems necessary to carry out the provisions of this subchapter."

The requirement that the Committee disgorge unlawfully retained contributions to the Treasury is not a new policy which significantly affects committees' rights or interests. A policy statement does not "alter the rights or interest of parties, although it may alter the manner in which parties present themselves or their viewpoints to the agency." American Hospital Ass'n, 834 F.2nd at 1047 (citing Batterton v. Marshall, 648 F.2d 694, 707(D.C. Cir. 1980)). The committees' rights and interests have not been affected here. Their duty with respect to illegal contributions is to redesignate, reattribute or refund these contributions within either 30 or 60 days, pursuant to 11 CFR §103.3. Therefore, the Committee has a general duty to relinquish unlawfully retained contributions. The 1992 letter does not alter this duty; it only notifies committees that all such untimely unresolved contributions must be paid to the United States Treasury.

b. Sample Review

The contributions that were not included in the comprehensive reviews discussed above were tested on a sample basis. The sample indicates that .1984% of the dollar value of the contributions or $9,419 represent excessive contributions.

In response to the interim audit report, Counsel for the Committee states that the Committee does not contest the excessive amount determined from this review.

The Committee has not complied with the recommendations contained in the interim audit report. As noted previously in regard to the specific areas, the Audit staff concluded that arguments submitted by the Committee were not persuasive and therefore a $71,525 payment to the U.S. Treasury was warranted.

Due to the Committee's apparent misunderstanding of the Commission's June 2, 1992 letter and relatively prompt action based on their interpretation of the letter, the Commission determined on December 8, 1994, that a payment to the U.S. Treasury for the 28 items totaling $7,362 which were refunded on June 17 and 18, 1992, was not required. Therefore, $64,163 ($71,525 - $7,362) remains as the total excessive contributions received by the Committee.

Recommendation #1

The Audit staff recommends that the Commission make a determination that the Committee is required to make a payment in the amount of $64,163 to the United States Treasury.

97043790133

3. Excessive Contributions Resulting from Advances

During our review of the Committee's expense reimbursements to campaign staff we noted expenses incurred on behalf of the Committee in excess of the $1,000 contribution limitation. The excessive portions of the contributions total $76,435. In order to calculate the amount of a contribution resulting from an advance made by an individual on behalf of the Committee, payments made by the Committee were applied against those expenses aggregating in excess of $1,000 that had been incurred the earliest. Where there was no amount remaining payable, we considered the last payment to be the refund of the direct contribution.

a. Staff Advances

Section 116.5(b) of Title 11 of the Code of Federal Regulations states that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR §100.7(b)(8). If the payment is not exempted under 11 CFR §100.7(b)(8), it shall be considered a contribution by the individual unless the payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement. In addition, "subsistence expenses" include only expenses related to a particular individual traveling on committee business, such as food or lodging.

With respect to advances made by Committee staff, four individuals advanced funds on behalf of the Committee (see Attachment VII) resulting in excessive contributions totaling $60,944.14/ The expenses incurred were for travel and subsistence and campaign related goods and services. The average number of

14/ This amount was adjusted for a $1,000 exemption under 11 CFR §100.7(b)(8) for two of the individuals for which the regulation was applicable.

97043790134

days outstanding before reimbursement ranged between 11 days and 236 days.

Included in the excessive amount noted above is $32,658 charged on a campaign official's credit card in July, 1992, and reimbursed on July 27,1992. The expenses were related to campaign staff's stay at the Sheraton Hotel/Towers during the 1992 Democratic Convention in New York (see Finding IV.C.).

According to the Committee its travel agent, American Express Travel Management Services, would have added a 10% commission to the cost of the lodging as a fee for its services. In order to save the commission fee the Committee made its arrangements through the DNC and charged the rooms using a campaign official's credit card. The Committee stated that the convention lodging also included the lodging of the campaign official who made the advance, and that the Committee thought since a credit card was used the reimbursement had to be made in 60 days. The Committee stated it made the reimbursement in a timely manner 10 days after the charge was incurred.

An individual associated with the Texas campaign advanced funds totaling $15,892, to open Tsongas for President offices in Texas. The resultant excessive contribution totals $14,892. We were unable to determine, based upon the documentation available, the dates these expenses were incurred. However, the Committee reimbursed these expenses in full on February 27, 1992.

The Committee had stated that it "will adopt the account out of which all expenditures were paid," apparently a reference to the Texas account, and notes that no excessive contribution exists. However, the expenses were not paid out of the Texas account but were paid by and reimbursed prior to opening the account discussed at Section II.

The Committee was made aware of this matter during field work and at the exit conference. Schedules detailing the individuals and amounts considered excessive contributions were provided to the Committee.

The Committee responded that for the most part the advances in question were not submitted for payment in a timely manner, but once submitted were paid in a timely manner. The Committee stated that its reimbursement policy provided that no reimbursement would be made without complete and proper documentation. In addition the Committee contends that in most cases it was not aware of the advances made by these individuals until the request for payment was made. The Committee submitted schedules detailing what it felt were the excessive contributions.

Since the expenses in question were for either travel and subsistence not reimbursed in 30 or 60 days as appropriate or campaign related expenses and were in excess of the

97043790135

$1,000 contribution limitation the expenses constitute excessive contributions.

With respect to the convention related expenses, the Committee notes:

> "The Goldman expenses represented, in part, 'usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate' See 11 CFR 116.5(b)(1). The Audit staff apparently takes the position that such expenses, to be exempt from the contribution definition, must be the expenses of the individual advancing the funds. The Committee disagrees with this interpretation. This phrase uses the phrase 'expenses incurred by an [emphasis in original] individual.' A previous clause in the same section refers to 'the individual's transportation expenses.' This distinction in phrasing indicates that different treatment was intended for subsistence expenses. At a minimum, this inconsistent phrasing creates an ambiguity and provides a good-faith basis for the Committee's position.
>
> In any event, the proposed advance by Mr. Goldman was presented to and expressly approved by members of the audit staff prior to the payment in question. The Commission now may not reverse its position to the Committee's detriment."

The Audit staff believes the Regulations are quite clear with respect to what is considered a contribution under 11 CFR §116.5, which states if the payment is not exempted under 11 CFR §100.7(b)(8), it shall be considered a contribution. The exception is for travel and subsistence expenses incurred by an individual for that individual's travel and subsistence. With the exception of Mr. Goldman's lodging, which has not been identified, the expenses are considered a contribution.

Although the Audit staff was aware that the Committee was attending the convention, no "approval" of any transactions the Committee was contemplating or in fact had made ever occurred. The Audit staff did, however, inform the Committee that any expenditures made in relation to the convention would be considered non-qualified campaign expenses. With respect to the reimbursement, the Audit staff was unaware of the transactions (payment by credit card and reimbursement of the expenses) until after the fact.

In the interim audit report, the Audit staff recommended that the Committee provide evidence to support that

97043790136

the staff advances noted above were not excessive contributions. In response to the interim audit report, Counsel for the Committee addressed each of the four individuals noted as having made excessive contributions as a result of advances of funds.

For the first individual, the Committee contends that the expenses were reimbursed promptly and well within the Commission's time limit for the refund of all forms of excessive contributions as set forward in 11 CFR §103.3. The Committee submits that there is no justification for treating a "contribution" resulting from an advance more strictly than other forms of excessive contributions and denying a political committee a reasonable opportunity to cure the potential violation by refund or reimbursement.

For the second and third individuals, the Committee responds that it reimbursed expenses submitted by these individuals in an exceedingly prompt matter after being presented with a properly documented request. The Committee contends that the Audit staff disregarded the date that the reimbursement request was submitted for reimbursement and has drawn the conclusion of excessive contributions from the date on which, unknown to the Committee, expenses appear to have been incurred. The Committee further states that "in accordance with Committee reimbursement procedures, no reimbursement was made until complete and proper documentation of expenses was provided."

With respect to the fourth individual, the Committee submitted an affidavit of the Business Manager which states, in part, that he became aware that certain Tsongas supporters in Texas had made advance payments for various campaign-related expenditures. Although he had not authorized the expenditures, he authorized reimbursement to be made promptly upon learning of the advances and within ten days of receiving notification of the expenditures. The Committee again states that this reimbursement was within the time limits governing the refund of excessive contributions as set forth at 11 CFR §103.3.

Finally, the Committee takes issue with the Audit staff's view that "to avoid the receipt of an excessive contribution, alleged expenses must be 'reimbursed' by a committee in the absence of both knowledge of the expenses and sufficient documentation from the alleged advancing party to substantiate the amount and campaign nexus of the expenditures. In addition to constituting frightfully unsound financial management practices, such an approach is bound to run afoul of the Commission's requirements for documentation of expenses as set forth at 11 C.F.R. §9033.1(b)." The Committee further submits that it should be given a reasonable opportunity to refund allegedly excessive advances after being presented with appropriate documentation of such expenditures.

The Committee has not complied with the interim audit report recommendation. Arguments submitted

9704379013 7

questioning the Audit staff's treatment of advances made by Committee staff are not persuasive. The Regulations provide committees with a time frame for reimbursing advances made by committee personnel for their travel and subsistence expenses. These types of contributions are specifically addressed in the Regulations as having their own set of time frames. Section 103.3 of Title 11 of the Code of Federal Regulations provides time frames for committees to correspond with contributors and remedy excessive contributions through redesignation or reattribution. These remedies are not applicable for expenses regulated by 11 CFR §116.5.

Further, the Explanation and Justification for 11 CFR §116.5, 55 Fed. Reg. 26382 (June 27, 1989) states, in part, that "an in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long reimbursement, if any takes." Thus, the Regulations do not provide for an individual to advance funds for any amount of time for campaign expenses other than for personal travel and subsistence. The Regulations require committees to form strong internal controls in order to comply. Not allowing committee personnel to advance funds for expenses other than travel and subsistence and requiring proper documentation for travel and subsistence would not constitute unsound financial management. By making clear to Committee personnel that they can not incur expenses on behalf of the campaign except for personal travel and subsistence, the campaign would have even more careful control over its finances. In the cases of an individual's personal travel and subsistence, the Regulations provide a reasonable time period for the Committee to receive proper documentation pursuant to 11 CFR §9033.11(b) and to make reimbursement without a contribution occurring. In addition, the Committee is not insulated from responsibility for complying with 11 CFR §116.5 simply because staff did not submit vouchers timely. This is another case where strong internal controls and policies should prevent this situation from occurring.

b. Advances Made by State Offices

Section 116.3(a) of Title 11 of the Code of Regulations states that a commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

The Committee established an office in New York to collect the required signatures for placement on the New

97043790138

York primary ballot. The New York office was administered by J. Armenakis, and was housed in the basement of Mr. Armenakis' law firm, Armenakis & Armenakis ("Armenakis"). In addition to Mr. Armenakis, two other paid Committee representatives worked on the New York campaign; everyone else worked on a volunteer basis. According to the Committee, it was recommended that the Committee obtain 20,000 signatures; however, approximately 13,000 to 14,000 were collected which caused the Lenora B. Fulani for President campaign to challenge the number of signatures in court.

A review of Committee records indicates that the New York campaign was funded by Committee payments for services rendered. The checks were made payable to either Mr. Armenakis or the law firm. Based upon documentation available, Armenakis incurred numerous expenses on behalf of the Committee for goods and services. In total, Armenakis provided the Committee with documentation to support expenses totaling $45,411.

Our review of the disbursement requests submitted to the Committee by Armenakis to support the expenses incurred and the payments made by the Committee indicated that Armenakis exceeded the $1,000 contribution limitation on different occasions by amounts ranging from $2,980 to $22,611. The average number of days outstanding range from 2 to 112.

For these expenses, the Committee paid Armenakis a total of $31,416, leaving an apparent balance of $13,995 that remains unpaid and results in a $12,995 excessive contribution. Included in the amount is $6,000 which Armenakis notes in a memo to the Committee "N.Y. Telephone called today to advise us that the latest bill (Jan. 25 - Feb. 24.) will be over $6,000)." Armenakis has not submitted a phone bill to the Committee for reimbursement.

With respect to the outstanding balance owed to Armenakis the Committee contends that it has paid Armenakis in full and that both parties agreed to the amount paid by the Committee. The Committee stated that it had disqualified the amount noted as payable since the expenses were not campaign related or not sufficiently documented. With respect to the $6,000 phone bill the Committee stated that Armenakis was submitting for payment 95% of the law firm's phone bill, and the Committee refused to pay the law firm's phone bill.

With respect to the contributions arising from advances made by Armenakis, the Committee stated that Armenakis was not advanced money but was funded on a reimbursement basis. The Committee stated that Armenakis kept asking for additional funds but the Committee refused to advance funds until adequate documentation was provided to support that the expenses were qualified campaign expenses.

In addition to the the petition drive, Armenakis provided legal services in connection with the defense

97043790139

of the petition challenge. Armenakis billed the Committee $15,596 for the legal services plus travel expenses for the attorney who appeared in court. According to a campaign official, Armenakis also donated legal services in connection to the petition defense. Given that the legal services provided are not FECA compliance related services and therefore can not be donated, an apparent contribution to the Committee in the amount of the normal charge for such services occurred. However, no records were provided that indicate the value of the donated services.

In regard to the $15,596 billed for legal services, $596 still remains unpaid. The Committee maintains that Armenakis was paid in full which results in a $596 in-kind contribution from Armenakis. This in-kind contribution, when added to the $13,995 outstanding balance noted above, results in a total outstanding balance of $14,591 and a remaining excessive contribution of $13,591.

During the period covered by this activity, it appears that Armenakis was comprised of two partners, James and Diana Armenakis.15/ In accordance with 11 CFR §110.1(e), the excessive contribution would also be an excessive contribution from each partner. Neither of the partners made an individual contribution to the Committee. Absent evidence to the contrary, it appears that each of the partners made an excessive in-kind contribution of $6,295.50 [(1/2 x $14,591 outstanding balance) - $1,000 individual contribution limitation].

In addition to the $6,000 telephone charge mentioned above, the expenses which the Committee states comprise the unpaid balance include charges for per diem, travel and food for volunteers ($2,041), office expenses (copying, postage, supplies, shipping)($2,046), catering ($800), payments, mostly to one individual with no recorded purpose ($3,552) and miscellaneous expenses ($150).

The Committee had no comment regarding this matter at the exit conference. Subsequent to the exit conference, the Committee provided the Audit staff an invoice from Armenakis dated September 2, 1992 for "legal services, consulting and campaign related activities as negotiated by David Goldman." The accompanying correspondence states that the invoice "supersedes all invoices previously sent." However, the original invoices clearly establish that Armenakis incurred and paid expenses in connection with its work on behalf of the campaign which remain unpaid and which have not been the subject of a debt settlement pursuant to 11 CFR 116.2. Therefore, the Committee has received an apparent excessive contribution totaling $13,591 from the partnership and a $6,295.50 excessive contribution from each partner.

15/ The source of this information is the Martindale-Hubbell Law Directory published in April, 1992.

9704379014C

In the interim audit report the Audit staff recommended that the Committee provide the following:

- evidence supporting that the $14,591 noted above is not payable to Armenakis, and $13,591 is not an excessive contribution, or evidence that the Committee has paid the amount due Armenakis (front and back of the canceled check); and

- evidence that the Committee did not receive a $6,295.50 excessive contribution from each partner of the law firm; and

- an explanation regarding any services volunteered by Armenakis with respect to the legal defense of the Lenora B. Fulani for President challenge and a billing statement prepared by Armenakis detailing the services provided and the cost of such services.

In response to the interim audit report, Counsel for the Committee states:

> "It is the Committee's position -- and that of the law firm -- that the law firm has been paid in full. The reimbursement request submitted by the law firm contained charges for expenses that were not discernibly campaign-related or did not reflect a rational allocation of overhead items, such as telephone charges, between the campaign and the ongoing business of the law firm.18/
>
> [Footnote 18] - "As the Interim Report notes, the expenses disallowed by the Committee included approximately $3,500 of payments to an individual with no recorded purpose. Interim Report Page 23.
>
> "After being advised that the Committee considered certain of the documentation unacceptable, the law firm sent a revised invoice, dated September 2, 1992 reducing the amount sought for reimbursement. The Audit staff apparently concludes that the reduction in the amount sought represents a subsidy to the Committee by the law firm. Rather, the reduction was a recognition that the original request was inappropriate. Commission regulations recognize that a creditor and a political committee are entitled to agree on a revaluation of a disputed obligation without a political contribution by the creditor resulting. See 11 C.F.R. §116.10. The Audit staff does not set forth any justification for disregarding the arms-length resolution of this disputed debt, nor

97043790141

identify any particular allegedly unreimbursed expense that it considers to be campaign-related.

"The Committee is unaware of the basis of the reference by the Audit staff to alleged legal services volunteered by the New York law firm and, thus, is unable to respond to this issue. The Committee notes, however, that even if such services were volunteered, Commission advisory opinions provide substantial latitude for the donation of legal services by law firm partners without a contribution resulting. See Advisory Opinion Nos. 1979-58, 1980-107. Although the Committee did encourage the provision of volunteer services, it did so with the expectation that any volunteer attorneys would assist the campaign in a manner consistent with their other professional and employment obligations and in accordance with the FECA and regulations."

The Committee has not complied with the recommendation contained in the interim audit report. The Committee's response does not contain adequate documentation and explanations to demonstrate that an excessive contribution did not occur. The Committee has not provide a persuasive argument that the expenses submitted were not campaign related. Armenakis ran the New York campaign and naturally incurred expenses on the Committee's behalf. The Audit staff believes that the original invoices submitted by the firm indicates that expenses were incurred without receiving full reimbursement. It is further noted that the invoice from Armenakis which supposedly supersedes all other invoices is dated subsequent to the conclusion of audit fieldwork during which the Committee was notified of this apparent excessive contribution. The Committee stated that the original documentation was insufficient and the payment was reduced accordingly. However, the Committee did not address specifically the $6,000 in telephone charges, the $2,041 in per diem, travel and food for volunteers, the $2,046 in office expenses, the $800 for catering, the $3,552 with no recorded purpose, or the $150 in miscellaneous charges which the Committee did not pay. No information was provided to demonstrate that the items were not expended on behalf of the Committee which results in an in-kind contribution by the law firm.

The Audit staff regrets that Committee representatives do not recall the conversation concerning the apparent donation of legal services. The Advisory Opinions noted by the Committee relate to law partners working for a campaign and continuing to be paid by its firm. They do not address the donation of legal services. The donation of legal services is regulated by 11 CFR §100.7(b)(14). As noted previously, the legal services apparently provided by Armenakis would not be considered exempt activity under that regulation.

9704379012

B. Misstatement of Financial Activity

Section 434(b) of Title 2 of the United States Code states, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and disbursements received or made during the reporting period and the calendar year.

The Audit staff's reconciliation of the committee bank accounts to its disclosure reports filed from inception through April 30, 1992, indicated a material misstatement of financial activity in both 1991 and 1992. The differences are discussed below.

1991

For 1991, reported receipts were understated by $705,779; reported disbursements were understated by $860,917; and reported ending cash was overstated by $155,138.

The misstatement of receipts occurred primarily as a result of the Committee not reporting $710,662 in loans, contributions from individuals and other receipts deposited into the Andover Account (see Section II.); and a reconciling item totaling $4,883.

The misstatement of disbursements was primarily the result of unreported disbursements from the Andover Account of $709,118; varied unreported disbursements from the operating, payroll, and advertising accounts totaling $98,519; unreported payroll for the 4th quarter totaling $55,779; disbursements reported either incorrectly or not supported by check or other debit advice totaling $2,302; and a reconciling item totaling $197.

1992

Through April 30, 1992, reported receipts were understated by $371,382; reported disbursements were understated by $607,367; and reported ending cash on hand was overstated by $391,123.

As discussed at Finding IV.B., the Committee utilized American Express Travel Management Services ("Amex") as their travel agent. Amex arranged chartered aircraft and ground transportation for the Committee, and billed the Press and U.S. Secret Service for their transportation and other costs associated with their travel. The Committee was generally billed for the cost of the trip plus 10% and any amounts received from the Press and Secret Service as reimbursement were credited to the Committee's account. This procedure understated both the Committee's receipts and disbursements by the amount recovered from the Press and Secret Service. Also, the schedules A-P which should have identified the Press organizations and Secret Service

97043790143

that were the source of the receipts and schedules B-P which should have disclosed the payee of the disbursements were not filed. As of April 30, 1992, the Press and Secret Service had paid $306,75816/ to Amex for charter services which had been credited to the Committee's account.

The remaining misstatement of receipts occurred as a result of not reporting a $42,000 return of funds from Mr. Rizzo in January of 1992 (see Section II.); not reporting the deposits of contributions into both the Andover Account ($8,647) and the Texas account ($10,241); improperly reporting $4,300 in NSF contributor checks; and the unreported receipt of contributions, and refunds and rebates totaling $8,036.

The remaining misstatement of disbursements was primarily the result of unreported disbursements from the operating account totaling $103,912; unreported March disbursements made from the advertising account totaling $405,728; March payroll not reported totaling $32,177; other unreported disbursements from the advertising and payroll accounts totaling $24,001; service charges not reported totaling $7,969; incorrectly reporting the amount of checks on the disclosure reports totaling $283,869 (net), which includes a check for $30,005 being reported as $300,005; unreported disbursements from the Andover Account totaling $9,896; an unreported payment to Mr. Rizzo of $42,000; unreported disbursements from the Texas account of $10,045; duplicate reporting of expenditures totaling $74,056; checks written in 1991 and reported in 1992 totaling $75,748; April, 1992 checks totaling $54,273 and reported in May, 1992; addition errors in the Committee's March 1992 disclosure report totaling $27,475; unreported wire transfers of $57,761; the improper reporting of checks that have been voided in the amount of $44,099; and a reconciling item of $3,144.

The Committee was provided with schedules detailing the misstatements during audit fieldwork, and again at the exit conference. In response the Committee provided an amendment for 1991, which materially corrected the misstatement except for the Andover Account and was received on September 14, 1992. The Committee also provided an amendment for 1992 on January 21, 1993 which materially corrected the misstatement.17/

16/ Amounts received from the Press and the Secret Service between May 1, and July 2, 1992, total $129,967. As with the earlier transactions the associated receipts and expenditures were not reported by the Committee although the amounts relating to the earlier period were included on amended disclosure reports.

17/ The Committee did not disclose the activity from the Andover Account. However, the activity in the account for 1992 was limited and the reports were materially corrected without reporting the activity.

97043790144

In the interim audit report, the Audit staff recommended that the Committee amend its 1991 reports to include the activity from the Andover Account.

In response to the interim audit report, Counsel for the Committee states:

> "The Interim Report recommends that the Committee amend its 1991 reports 'to include the activity from the Andover Account.' The Audit staff's recommendation is not specific as to the manner in which the 'activity' is to be included. The Committee is prepared to submit a comprehensive amendment to its 1991, 1992, and 1993 reports to reflect a receivable from Nicholas Rizzo in the amount of the contribution checks (other than loans) that he failed to forward to the Treasurer. The amendment will contain as an exhibit the list of contributors and amounts of contributions so that there is full public disclosure of the intended financial supporters of the presidential candidacy of Paul Tsongas.
>
> "The proposed amendment also will contain a descriptive footnote with the following text:
>
> > This figure represents amounts due to the Committee from Nicholas A. Rizzo, former fundraising consultant to the Committee. This amount is calculated to include contributions intended for the Committee received by Mr. Rizzo during 1991 and 1992, but not forwarded to the Committee as required by applicable law. A schedule of the contributions comprising this amount, compiled by the Audit staff of the Federal Election Commission, is attached as Exhibit 1 to this report. Mr. Rizzo has been ordered to make restitution of these funds to the Committee as part of a sentence imposed by the United States District Court for the District of Massachusetts.
>
> This reporting treatment is fully consistent with the disposition in U.S. v. Rizzo, in which Mr. Rizzo admitted that he 'failed to forward or caused others to fail to forward contributions...and failed to properly deposit contributions.'
>
> "The amendment also would reflect an 'other disbursement' denoting that the Rizzo receivable is not collectible. This entry will carry the following explanatory footnote:

9704379014 5

This figure represents amounts due to the Committee from Nicholas A. Rizzo that the Committee has concluded, in the exercise of its considered judgment, are uncollectible. Despite numerous requests and demands on Mr. Rizzo since July of 1992, he has not provided any payment or reasonable prospect of full or partial payment. Information received by the Committee, as well as representations by Mr. Rizzo's counsel to the federal court in U.S. v. Rizzo indicates that Mr. Rizzo is without the means to make this repayment.

"The amendment also will reflect a further account payable to Nicholas A. Rizzo representing the excess of campaign-related expenses either paid out of the Andover account or paid by Mr. Rizzo in some other manner over the amount of such expenses previously reimbursed to Mr. Rizzo but subsequently determined to be unreimbursable. This balance, based on the figures contained in the Interim Audit Report, is $47,028.

"The Committee does not believe that the amendment should list the 'loans' received by Mr. Rizzo fraudulently obtained using the Committee's name. As noted above, the federal court in U.S. v. Rizzo directed that Mr. Rizzo repay these loans directly to the lenders and not to the Committee.

"To the extent that the Audit staff recommends that the Committee report the individual contributions to and disbursements from the Andover account in a manner as if they had been made to or from the Committee's authorized account, the Committee disagrees with the legal and factual predicate of that recommendation for the reasons outlined above."

As noted previously, the Andover Account is considered an account of the Committee and the transactions routed through the account should be reported accordingly. Further, although the individual contributions deposited into the Andover Account were misappropriated by Mr. Rizzo, they were nonetheless received by the Committee through its authorized fundraising agent. It is also noted that the amended reports described in the Committee response have not been filed.

IV. Findings and Recommendations - Repayment Issues

A. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of

97043790146

any payment made to a candidate from the matching fund payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9038.2(b)(2)(iii) of Title 11 of Code of Federal Regulations states that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

Pursuant to 11 CFR §9033.5(a), the Commission determined Senator Tsongas' date of ineligibility to be March 19, 1992.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified Through The Date of Ineligibility - March 19, 1992}}{\text{Total Deposits Through The Date of Ineligibility}}$$

$$\frac{\$745,741.78}{\$745,741.78 + \$4,513,881.64} = .141786$$

Thus, the repayment ratio for non-qualified campaign expenses is 14.1786%.

In response to the interim audit report, Counsel for the Committee states that "[t]he Committee agrees with the repayment ratio as calculated. The Committee does emphasize, however, that if the Audit staff persists in laboring under its erroneous impression that the Andover account is a Committee account and that expenditures from that account are subject to repayment under 26 U.S.C. §9038(b)(2)(A), then the deposits into the Andover account must be added into the denominator of the repayment formula, with the ratio reduced accordingly."

The Audit staff notes that the activity from the Andover Account was included in the determination of the repayment ratio contained in the interim audit report and above.

B. Press and U.S. Secret Service Billings

Sections 9034.6(a), (b) and (d) of Title 11 of the Code of Federal Regulations state, in part, if an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, Secret Service personnel or national security staff,

97043790147

such expenditures will be considered qualified campaign expenses. If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed the media representatives pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

The Committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services. This deduction shall not exceed the amount the committee expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation.

For purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursements, whether performed by committee staff or independent contractors.

1. Press Billings

The Committee utilized American Express Travel Management Services ("Amex") as their travel agent. Amex chartered six trips for the Committee which were made between February 19, and March 18, 1992. In addition to arranging the chartered aircraft, ground transportation, lodging and catering, Amex provided the following: on plane personnel to track the

9704379018

Press passengers, billed the media and Secret Service for their travel, provided collection services, and applied the remittances to the Committee's account.

Amex provided for our review flight manifests, records of the air and ground costs, and in some instances catering costs associated with each trip. To the total trip cost Amex applied a 20% markup and divided this cost by the total number of Committee, Press and Secret Service passengers. The Amex personnel aboard the flight were not included in the passenger count for purposes of the pro rata calculation. This pro rata share was then billed to the Press passengers. Amex billed the Press $402,850 for the six trips taken. As of July 2, 1992, $382,058 had been collected from the Press.18/

According to the Committee, half of the 20% markup charged by Amex is part of the actual cost of the service and is therefore billable to the Press and the Amex personnel should not be included in the passenger count. The Committee provided the following written explanation regarding the Amex billings:

> "Services provided for by Amex as travel agent should be considered a charge as is usual in business practices. The Amex representative who traveled on the plane was facilitating the use of the plane for media, US Secret Service and for committee passengers. The Amex representative's role in the plane was to provide services and not as a recipient of such. Amex is not in the business of providing free services. If Amex were to be asked to pay for a % of costs, it would in effect be paying to provide free services.
>
> "Amex calculated a mark up of 10% for the media passengers.
>
> "For easy computation, Amex used a 20% figure in its workpapers. This 20% [was] comprised of a 10% commission charged by Amex to all passengers and a 10% mark up requested by the Committee charged to media. By Committee's computation, the traveling Press pro rata totals $384,073.33. The Committee 10% mark up allowed a billable

---

18/ The amount which could be verified as of this date was $382,058. The Committee's disclosure reports do not disclose any subsequent receipts from the press. In the Committee's response to the exit conference, they state that they received $389,410. No documentation was provided to support this number. Therefore, the Audit staff has used $382,058 in performing its review and calculations.

9704370149

amount of $422,481.14. A recovery rate of 103% yields $395,592.52. Since only $389,410.30 has been received from the Press, the Committee has not yet reached the level where it is obliged to pay the US Treasury."

The Committee also provided a letter from Amex stating that "the traveler was charged the net cost, plus a 10% commission, due to American Express, which is an industry standard, and a 10% Administrative fee as you had requested us to charge."

The Commission's regulations provide that only a 10% mark up on the actual cost of transportation and services may be billed to the Press and that the total number of passengers on the plane must be used in determining the pro rata share per passenger. The Audit staff prepared a revised Press billing by Flight/Leg number for each trip. Our review indicated that the pro rata cost of the Press for these flights totals $333,542.20. The maximum amount billable to the Press (110% of cost) totals $366,896.

Based on our review it appeared that, in most cases, Amex billed the Committee the amounts reflected on the charter manifests for the trips plus 10%. The 10% markup is considered an administrative fee paid by the Committee. Also, the pro rata cost of the Amex personnel who traveled on the aircraft is considered an administrative cost to the Committee. As a result the Committee incurred administrative costs in excess of 10% of actual costs and may collect up to the maximum billable amount (110% of cost) without incurring any repayment obligation. However, these administrative costs do not permit the Committee to bill or receive more than 110% of actual cost.

As noted above, $382,058 has been reimbursed by the Press; and based upon the total amount billed, $21,412 remained uncollected as of July 2, 1992. However, the amount received as of July 2, 1992, represents $15,162 ($382,058 - 366,896) in excess of the maximum billable amount. This amount is included on the Committee's Net Outstanding Campaign Obligations as an accounts payable to the various Press organizations the Committee over billed during the campaign.

2. U.S. Secret Service Billing

The Secret Service accompanied the Candidate on a portion of trip five and on trip six. The total amount billed for these trips was $49,129, of which the Secret Service reimbursed $49,567. Based upon the billing statement provided by Amex it appears that the Secret Service was billed the lesser of first class air fare or pro rata cost as calculated by Amex (including a 10% markup). In addition, no amount was billed for trip 6 leg 11 for which the flight manifest reflects 9 Secret Service passengers.

9704379016C

We prepared a schedule based upon actual transportation cost for the flights on which the manifests reflect Secret Service passengers including the flight not billed. We calculated a billable amount of $45,096 for the lesser of first class or pro rata cost. This amount is $4,471 ($49,567 - 45,096) less than the amount received from the Secret Service by the Committee. This amount ($4,471) is shown on the Committee's statement of Net Outstanding Campaign Obligations as payable to the Secret Service.

At the exit conference the Committee stated the Amex had reached an agreement with the Secret Service on the amount to be billed for the Secret Service passengers.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that it did not over bill the Press. Absent such evidence the Committee should refund to the Press $15,162 and provide photocopies of the negotiated refund checks (front and back); and provide documentation to support the calculations of the amount paid to each Press organization. In addition, any amounts received after July 2, 1992, should also be refunded. With respect to the Secret Service the Committee should provide evidence that the Secret Service was not over billed or refund $4,471 to the U.S. Secret Service and provide documentation of such refund.

In response to the interim audit report, Counsel for the Committee states that the correspondence from the travel agent confirms that its ten percent commission "is an industry standard" and is part and parcel of the cost to the Committee of the travel arrangements in question. The Committee asserts that it could not have received the services without paying that commission. Further, the Committee states that the commission does not defray the Committee's administrative costs and that by preventing the Committee from charging an administrative fee, the Audit staff fails to compensate the Committee for media organizations that did not pay their full share. In addition, the Committee quotes an article in Travel Weekly magazine which it say supports the Committee's position that commissions are not an administrative fee. With respect to the U.S. Secret Service billings, the Committee states that it is their understanding that the Secret Service has agreed with the Committee's travel agent that no further refund is due.

With respect to the article in Travel Weekly, it is noted that the article describes one of the other Presidential campaigns in which a travel agency was used. The author of the article purports to explain federal law. However, even if Commission policy was influenced by articles from magazines, the quote used by the Committee does not apply to the above discussion concerning commissions or administrative costs. In addition, two distinctions can be drawn between this Committee and the one described in the article. First, the committee described in the

9704379015 1

article paid the charters directly and the travel agent only billed and collected from the press and Secret Service. Second, the commissions paid to the travel agent were considered by the committee as an administrative expense.

The Committee's argument that the commission paid to the travel agent is part of actual cost is not persuasive. That commission represents administrative costs incurred by the Committee for the travel agent's efforts in arranging travel and seeking and collecting reimbursements from the media and Secret Service. As explained earlier, the Commission's regulations make it clear that these administrative costs cannot be converted to actual cost of the transportation provided simply by paying a vendor to provide the service rather than the Committee performing the work in house. In addition, the argument that this treatment prevents the Committee from recovering costs for press organizations that did not pay their full share is moot. The administrative allowance and the 10% allowable mark up is not intended to permit a committee to bill paying press for those who do not pay. As noted above, the Committee received in excess of the actual costs of the trips plus the 10% markup provided for in the Regulations. Finally, the Committee has continually stated that the Secret Service and Amex agreed on the amount billed to the Secret Service. However, the information provided to the Secret Service contained a 10% markup on the actual cost figures expressed as part of actual cost. There is no indication that based on actual cost figures, the Secret Service agrees with what they have been billed.

Recommendation #2

The Audit staff recommends that the Committee be required to refund the Press $15,162 and refund the Secret Service $4,471 and provide photocopies of the negotiated refund checks (front and back).

C. Apparent Non-Qualified Campaign Expenses

Section 9032(9) of Title 26 of the United States Code defines, in part, the term "qualified campaign expense" as a purchase or payment incurred by a candidate or his authorized committee made in connection with his campaign for nomination which neither the incurrence of nor payment of which constitutes a violation of any law of the United States or of the state in which the expense is incurred or paid.

Section 9038.2(b)(2) of Title 11 of the Code of Federal Regulations states, in relevant part, that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. The amount of any repayment under this section shall bear the same ratio to the total amount determined to have been used for non qualified campaign expenses

97043790152

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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

Dec 4 4 40 PM '95

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 4176
STAFF MEMBERS: Delanie DeWitt Painter
Jane J. Whang

SOURCE: Internally Generated

RESPONDENTS: The Tsongas Committee, Inc.,
S. George Kokinos, as
treasurer
Foley Hoag & Eliot
Armenakis & Armenakis
Dennis Newman
Andy Paven
David Goldman

RELEVANT STATUTES/
REGULATIONS:
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 431(8)
26 U.S.C. § 9032(4)(A)
26 U.S.C. § 9032(9)
11 C.F.R. § 110.1(e)
11 C.F.R. § 102.6(c)(3)
11 C.F.R. § 103.3
11 C.F.R. § 116.3
11 C.F.R. § 116.10
11 C.F.R. § 116.5.
11 C.F.R. § 100.7(b)(4)
11 C.F.R. § 100.7(b)(8)
11 C.F.R. § 9032.9.
11 C.F.R. § 9033.11(b)
11 C.F.R. § 9034.6

INTERNAL REPORTS
CHECKED: Audit Documents

FEDERAL AGENCIES
CHECKED: None

97043790153

I. GENERATION OF MATTER

This matter was generated by an audit of The Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a).1/ The Committee registered with the Commission on March 18, 1991 as Paul Tsongas' principal campaign committee for the 1992 Democratic presidential primary election. The audit covered the period from the Committee's inception, March 7, 1991 through July 31, 1992. Paul Tsongas (the "Candidate") was determined eligible to receive matching funds on November 20, 1991, and received a total of $3,003,981 in matching funds from the United States Treasury ("Treasury"). The issues referred to this Office involve findings of apparent unresolved excessive contributions, staff advances, extensions of credit, and press overcharges. See Attachment 1. This report does not include issues concerning the Committee's Andover account and the activity of Nicholas Rizzo, which were severed from the instant MUR. Specifically, the excluded issues were merged into MUR 3585 on July 18, 1995. See GC Report on MUR 3585, dated June 23, 1995.

II. APPARENT EXCESSIVE CONTRIBUTIONS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed

---

1/ The Audit Division's referral materials are attached. Attachment 1.

9704379015 4

$1,000. 2 U.S.C. § 441a(a)(1)(A).2/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

Contributions made by a partnership shall not exceed the limitations on contributions in 11 C.F.R. § 110.1(b), (c) and (d). A partnership is considered to be a "person" for purposes of enforcing the Act. 2 U.S.C. § 431(11). Contributions written on partnership accounts shall be attributed to both the partnership and to each partner in direct proportion to his or her share of the partnership profits, and shall not exceed contribution limitations. 11 C.F.R. § 110.1(e).

A. UNRESOLVED INDIVIDUAL AND PARTNERSHIP CONTRIBUTIONS

The audit revealed that the Committee accepted excessive contributions totaling $34,849. This amount includes: two excessive contributions totaling $1,100 from an undisclosed bank account in Texas;3/ 12 contributions totaling $2,830 that had not been refunded;4/ and $9,419 projected from a sample review of

9704379015 5

2/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

3/ On January 1, 1993, the Committee filed an amended Statement of Organization to recognize the previously undisclosed Texas account as a Committee account.

4/ See Attachment 1 at 13, 14. This amount includes all excessive contributions found on the Committee's database during the audit, but excludes one contribution for $50 for which the Committee provided evidence of refunding.

excessive contributions.5/ Finally, this amount also includes $21,500 in excessive contributions, resulting from 25 checks totaling $22,500 drawn on a partnership account of a law firm, Foley, Hoag and Eliot. See 11 C.F.R. § 110.1(e).

During the audit, the Committee challenged the finding concerning the $21,500 in excessive partnership contributions.6/ See Attachment 2 at 18. Specifically, the Committee argued that the contributions were "deducted from each Partner's individual net income distribution" and also from firm profits. Attachment 2 at 31. Therefore, the Committee contended that these contributions were analogous to the corporate non-repayable drawing accounts that the Commission has recognized as available for individual contributions. Attachment 2 at 18; see also 11 C.F.R. § 102.6(c)(3).

The Final Audit Report rejected the Committee's arguments with respect to the excessive partnership contributions. The Commission has explicitly noted that contributions made by a partnership check are attributable to both the partnership and the

9704379015 6

5/ The Commission notified the Committee by letter dated June 2, 1992, that it would use a sampling technique to determine, in whole or in part, the amount of prohibited and excessive contributions received by the Committee. See Letter from Commissioner Aikens to Committee, June 2, 1992. The Commission's letter notified the Committee that it would not recognize untimely refunds, redesignations or reattributions made more than 60 days following the candidate's date of ineligibility or after the date of the receipt of this letter, and that all unresolved prohibited or excessive contributions shall be requested to be paid to the United States Treasury.

6/ The Committee did not dispute the other findings concerning excessive contributions discovered through review of the Texas account, receipts database, and sample pool.

designated individual partners. See Explanation and Justification for 11 C.F.R. § 110.1(e), 52 Fed. Reg. 764-765 (January 9, 1987); see also Legal Comments to the Final Audit Report on the Tsongas for President Committee, Inc., dated October 31, 1994, citing Notice on Corporate Contributions [Transfer Binder] Fed. Election Camp. Fin. Guide (CCH) ¶ 9064 (Federal Election Commission, August 28, 1978).7/ Thus, the 25 checks are considered to be individual and partnership contributions.

Based upon the foregoing discussion, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting $34,845 in unresolved excessive individual and partnership contributions. We further recommend that the Commission find reason to believe that Foley, Hoag and Eliot violated 2 U.S.C. § 441a(a)(1)(A) by contributing $21,500 in excessive partnership contributions.

B. EXTENSIONS OF CREDIT

A commercial vendor may extend credit to a candidate or political committee, or other person on behalf of the candidate or political committee. 11 C.F.R. § 116.3. An extension of credit is not considered a contribution, provided that the credit is extended in the ordinary course of the commercial vendor's

---

7/ See also Advisory Opinions ("AO") 1981-50, 1990-3, and 1992-17. In addition, the Committee's analogizing of the partnership account to a corporate non-repayable drawing account is misplaced. The latter is specifically set up to allow personal withdrawals against salary and profits; however, in the Committee's situation, it appears the firm's profits were not distributed until the end of the year, and that partners were not in normal practice permitted personal withdrawals against the account.

9704379015 7

business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(a). Additionally, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.7(a)(1)(iii)(A).

The Commission's audit revealed that the Committee underpaid $14,591 to the New York law firm of Armenakis and Armenakis ("Armenakis"). The law firm obtained signatures on behalf of the Committee for the New York primary ballot, and charged the Committee a total of $45,411, of which the Committee did not pay Armenakis a balance of $13,995. The Committee also did not pay Armenakis $596 of a $15,596 invoice for legal defense concerning a petition challenge.8/ Thus, it appears based on the audit that the Committee failed to pay Armenakis a total of $14,591 ($596 + $13,995), resulting in an excessive contribution of $13,591 by the partnership. See 11 C.F.R. § 100.7(a)(1)(iii)(A). Because the partnership was composed of two partners, each partner made an excessive in-kind contribution of $6,295.50, pursuant to 11 C.F.R. §§ 110.1(e) and 116.5.9/ See Attachment 1 at 23.

9704379015 8

8/ In addition, the auditors note that a campaign official stated that Armenakis donated some legal services not related to compliance with the Act. These services would amount to an in-kind contribution; however, no records were furnished to document the value of these services. See Attachment 1 at 23. Further, the Committee disavowed knowledge of the "alleged legal services volunteered" by the firm. See Committee's Response at 25. Therefore, this Office makes no recommendation with respect to these alleged volunteer services.

9/ This amount includes reductions for each partner's $1,000 individual contribution.

During the audit, the Committee disputed the characterization that it received excessive contributions totaling $13,591 from Armenakis. Specifically, the Committee argued that the law firm had reduced these charges by subtracting certain non-campaign related items in an invoice dated September 1992 that allegedly superseded previous invoices. Committee's Response at 24. The Committee further contended that a creditor and a political committee are entitled to settle a disputed debt in this manner, pursuant to 11 C.F.R. § 116.10.

The Committee paid less than the apparent "usual and normal charge" for the services, creating an in-kind contribution. See 11 C.F.R. § 100.7(a)(1)(iii)(A). The Final Audit Report noted that the law firm revised its invoice only after the Commission's audit of the Committee. Attachment 1 at 25. Further, the Committee did not provide persuasive evidence that the invoice was reduced due to non-campaign expenses, nor did it specifically address how certain telephone charges, per diem, travel and food, office, and catering charges were not related to the law firm's work for the Committee. See Attachment 1 at 25. Moreover, if a political committee's debt is forgiven or settled for less than owed, a contribution arises, "unless such debt is settled in accordance with the standards set forth at 11 C.F.R. §§ 116.3 and 116.4." 11 C.F.R. § 100.7(b)(4).10/ There is no evidence to suggest that the Committee's debt was reduced or treated in accordance with the regulations at sections 116.3 and 116.4.

9704379015 9

10/ These regulations require that a committee submit debt settlements to the Commission for its review and approval.

Based upon the foregoing, it appears that the Committee's debt is an in-kind contribution.

The Office of General Counsel therefore recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from Armenakis. Further, we recommend that the Commission find reason to believe that Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to the Committee.

C. STAFF ADVANCES

An individual's payment from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a political committee is a contribution unless that payment is exempted from the definition of contribution under 11 C.F.R. § 100.7(b)(8). 11 C.F.R. § 116.5. However, an individual's payment for his or her own transportation or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee will not be considered a contribution if the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made with a personal credit card, or 30 days after the date that expenses were incurred if cash was used. 11 C.F.R. § 116.5(b).11/ If, however, an individual incurs expenses for the subsistence of others who are traveling on behalf of the campaign, a contribution occurs

9704379016C

11/ Additionally, an individual's unreimbursed payments up to $1,000 per election for transportation or subsistence expenses incurred on behalf of a campaign are not considered contributions. See 11 C.F.R. § 100.7(b)(8).

regardless of when the individual pays the expenses or when the committee reimburses the individual. 11 C.F.R. § 116.5; see also Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Committee accepted staff advances from four individuals totaling $60,844. These advances were outstanding for a period of 1 to 236 days. This amount includes $32,658 in advances charged to campaign official David Goldman's credit card during July 13-17, 1992 and reimbursed on July 27, 1992, for the travel and subsistence of individuals other than Mr. Goldman to the Democratic Convention. In addition, Bob Krueger advanced $15,892 to the Committee by paying for campaign expenses at the Committee's Texas office, resulting in excessive contributions totaling $14,892.12/ See Attachment 3. The dates on which these expenses were incurred are not clear; however, the Committee reinbursed these expenses in full on February 27, 1992. Finally, Dennis Newman extended $11,169 and Andy Paven extended $2,125 to the Committee when they paid for either their own, or others' travel or subsistence expenses related to the campaign. Attachment 3. Mr. Newman's advances remained outstanding from five days to eleven months, and Mr. Paven's advances were outstanding from one day to five months.13/ Id.

9704379011

12/ The auditors deducted $1,000 from this amount, due to Mr. Krueger's unused contribution limitation.

13/ Both these individuals were allowed the $1,000 travel exemption, pursuant to 11 C.F.R. § 100.7(b)(8).

During the audit, the Committee argued that all the expenses of these individuals were refunded as promptly as possible, upon submission of receipts. Attachment 2 at 21-24. The Committee asserted that certain expenses were not submitted promptly and it was therefore impossible for the Committee to refund or even be aware of such advances. Id. Moreover, the Committee argued that it should be allowed to reimburse expenses within a reasonable period after receiving documentation for the expenses, because to require a reimbursement in the absence of documentation is an unsound management practice that could lead to violations of the documentation requirements of 11 C.F.R. § 9033.11(b). Id. Finally, the Committee noted that some of the staff advances were reimbursed well within the Commission's time frame for refunding other kinds of excessive contributions, 11 C.F.R. § 103.3, and that there is no justification for treating a contribution from a staff advance more strictly than other forms of excessive contributions. Id.

As noted in the Final Audit Report, the Committee misinterprets the regulations; an advance is considered to be an in-kind contribution if untimely reimbursed pursuant to § 116.5(b), or if incurred for other than an individual's personal transportation or subsistence. See Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989). Further, the regulations are explicit that the period for reimbursement with respect to certain advances begins from the date of incurrence. See 11 C.F.R. § 116.5. In addition, staff

9704379016 2

advances, like other excessive in-kind contributions, cannot be refunded under section 103.3.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(a)(1)(A) by accepting $60,844 in excessive contributions in the form of staff advances.

This Office further recommends that the Commission take no action and close the file with regard to Bob Krueger. Mr. Krueger made unauthorized advances in the amount of $15,892 related to opening an office in Texas. However, the Commission has already considered this transaction in the context of a complaint-generated matter, MUR 3758. In MUR 3758, the Commission determined, based on the exercise of its prosecutorial discretion, to take no action against Mr. Krueger, and closed the file on June 3, 1994. No new evidence was revealed by the audit that would justify altering the Commission's previous decision in MUR 3758 to take no action on this matter.

In addition, we recommend that the Commission find reason to believe Dennis Newman, Andy Paven, and David Goldman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Committee, but take no further action. In determinations concerning MUR 4172 (Clinton for President Committee) the Commission found reason to believe that individuals extending advances violated 2 U.S.C. § 441a(a)(1)(A), but took no further action against the individuals.14/ Consistent

14/ On the other hand, the Commission determined to pursue committees that accepted these staff advances.

9704379016 3

with the Commission's determinations in the enforcement matters involving 1992 presidential campaigns, the Office of General Counsel similarly recommends that the Commission take no further action against these individual respondents.

III. PRESS AND U.S. SECRET SERVICE BILLINGS

A. Statutory and Regulatory Provisions

The costs that a committee incurs in providing transportation, ground services and facilities for media personnel or the Secret Service are qualified campaign expenses. 11 C.F.R. § 9034.6(a). A committee may also receive reimbursement from a media representative for such expenditures as long as it does not exceed the representative's pro rata share of actual costs and services. Further, each media representative shall not pay to the Committee more than 110% of its actual pro rata costs of transportation and services. 11 C.F.R. § 9034.6(b).

B. Analysis

The Committee accepted excessive reimbursements from the press and the U.S. Secret Service for its provision of travel services. Specifically, the Committee collected $15,162 from the press and $4,471 from the Secret Service in excess charges.15/ This overcharge reflects a 20% markup that American Express ("Amex") applied to the actual travel costs, 10% of which the Committee

---

15/ American Express ("Amex") billed the press $402,850 for its trips, but only collected $382,058. The auditors calculated that $15,162 was collected in excess because the actual maximum amount billable to the press (110% of actual costs) was $366,896. Amex also billed the Secret Service $49,129, but collected $49,567. The auditors calculated that the Secret Service's maximum billable amount was $45,096, and that the Committee collected $4,471 in excess of this amount. See Attachment 1 at 32-34.

9704379014

contends was actually for part of the actual costs of the services.16/ The Committee argued that it was entitled to the 10% administrative fee in addition to the 10% markup that was charged by Amex. It contended that "the Committee could not have received the travel services without paying that [10%] commission." Attachment 2 at 25 (emphasis in original).17/ Therefore, the Committee argues, the 10% fee charged by Amex should be considered as the actual costs of travel services.

However, the regulations provide for only a 10% markup of the actual costs of transportation and services, and that the total number of passengers on the plane must be counted in determining the pro rata share per passenger. See Explanation and Justification for 11 C.F.R. § 9034.6, 52 Fed. Reg. 20870 (June 3, 1987). Because Amex provided all travel services, including the costs of collecting the bills and applying the remittances to the Committee's account, the Committee's argument that it was necessary to charge an additional 10% for administrative costs is

9704437901 65

16/ Amex's services included reviewing flight manifests, chartering Committee trips, arranging for ground transportation, lodging and catering, and providing on-plane personnel to track the press. Amex billed the media and the Secret Service directly for the travel, collected the bills and then applied the remittances to the Committee's account. The Amex personnel were also not included in the passenger count for purposes of the pro rata calculation. See Attachment 1 at 31, 32.

17/ The Committee also cited a Travel Weekly article that stated that federal election law does not consider payments to a travel agent, including charter air fare, to cover administrative fees. To the extent that this article can even be considered authoritative, the article is inapposite, because it concerns a travel agent who did not provide the full extent of services to a presidential committee that Amex provided in this instance. See Attachment 1 at 34, 35.

unsupported by the record. The Commission rejected the Committee's arguments and found in the Final Audit Report that the Committee should refund the press $15,162 and the Secret Service $4,471.

Therefore, we recommend that the Commission find reason to believe that the Committee violated 11 C.F.R. § 9034.6 by accepting $15,162 in excess reimbursements from the press. This Office further recommends that the Commission report the Committee's overcharges to the Secret Service, and take no further action with respect to the $4,471. This is consistent with the approach taken in MUR 3385 (Bush-Quayle '88) and MUR 3947 (Kerrey for President), in which the Commission advised the Secret Service of travel overbillings by these committees, but took no further action.18/

IV. CONCILIATION AND CIVIL PENALTY DISCUSSION

We recommend that the Commission enter into pre-probable cause conciliation with the Committee; Foley, Hoag and Eliot; and Armenakis and Armenakis. Attached for the Commission's review and approval are proposed conciliation agreements for those respondents.

9704379016

18/ Pursuant to 2 U.S.C. § 431(8)(A), a contribution is anything of value conveyed by a "person for the purpose of influencing" a Federal election. A person "does not include the Federal Government or any authority of the Federal Government." 2 U.S.C. § 431(11). Therefore, the overpayment by the Secret Service does not constitute a "contribution" for the purposes of the Federal Election Campaign Act.

9704370167

97043790168

V. RECOMMENDATIONS

1. Find reason to believe that the Tsongas Committee, Inc. violated 2 U.S.C. § 441a(f) by accepting $48,440 in excessive unresolved individual and partnership contributions, and excessive in-kind partnership contributions;

2. Find reason to believe that Foley Hoag & Eliot violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive partnership contribution to the Tsongas Committee, Inc.;

3. Find reason to believe that Armenakis & Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind partnership contribution to the Tsongas Committee, Inc.;

4. Find reason to believe that the Tsongas Committee, Inc. violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions in the form of staff advances;

5. Find reason to believe that Dennis Newman, Andy Paven, and David Goldman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions in the form of staff advances to the Tsongas Committee, Inc., but take no further action and close the file with respect to these respondents;

6. Take no action with regard to Bob Krueger;

7. Find reason to believe that the Tsongas Committee, Inc. violated 11 C.F.R. § 9034.6 by accepting $15,162 in excess reimbursements from the press;

8. Report the Tsongas Committee, Inc.'s overcharges to the Secret Service, and take no further action with respect to these excess reimbursements;

9. Enter into pre-probable cause conciliation with the Tsongas Committee, Inc., Foley Hoag & Eliot, and Armenakis & Armenakis;

10. Approve the attached Factual and Legal Analyses;

11. Approve the proposed conciliation agreements; and

12. Approve the appropriate letters.

Date 12/4/95

Lawrence M. Noble
General Counsel

Attachments

1. Audit Referral Materials
2. Committee's Response to the Interim Audit Report, dated December 13, 1993
3. Staff Advances Attachment
4. Deposition of David Goldman (excerpts)
5. Factual and Legal Analyses and Conciliation Agreements

97043790169

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: DECEMBER 7, 1995

SUBJECT: MUR 4176 - FIRST GENERAL COUNSEL'S REPORT DATED DECEMBER 4, 1995.

The above-captioned document was circulated to the Commission on Tuesday, December 5, 1995 at 11:00 a.m.

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

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

This matter will be placed on the meeting agenda for Wednesday, December 13, 1995.

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

9704379017C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4176
The Tsongas Committee, Inc.;	)	
S. George Kokinos, as treasurer;	)	
Foley Hoag & Eliot;	)	
Armenakis & Armenakis;	)	
Dennis Newman;	)	
Andy Paven;	)	
David Goldman	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 14, 1995, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 4176:

1. Find reason to believe that the Tsongas Committee, Inc. violated 2 U.S.C. § 441a(f) by accepting $48,440 in excessive unresolved individual and partnership contributions, and excessive in-kind partnership contributions;

2. Find reason to believe that Foley Hoag & Eliot violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive partnership contribution to the Tsongas Committee, Inc.;

3. Find reason to believe that Armenakis & Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind partnership contribution to the Tsongas Committee, Inc.;

(continued)

9704379017 1

4. Find reason to believe that the Tsongas Committee, Inc. violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions in the form of staff advances;

5. Find reason to believe that Dennis Newman, Andy Paven, and David Goldman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions in the form of staff advances to the Tsongas Committee, Inc., but take no further action and close the file with respect to these respondents;

6. Take no action with regard to Bob Krueger;

7. Find reason to believe that the Tsongas Committee, Inc. violated 11 C.F.R. § 9034.6 by accepting $15,162 in excess reimbursements from the press;

8. Report the Tsongas Committee, Inc.'s overcharges to the Secret Service, and take no further action with respect to these excess reimbursements;

9. Enter into pre-probable cause conciliation with the Tsongas Committee, Inc., Foley Hoag & Eliot, and Armenakis & Armenakis;

(continued)

9704379017 2

10. Approve the Factual and Legal Analyses attached to the General Counsel's December 4, 1995 report

11. Approve the proposed conciliation agreements recommended in the General Counsel's December 4, 1995 report

12. Approve the appropriate letters as recommended in the General Counsel's December 4, 1995 report.

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

Attest:

12-15-95
Date

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

9704379017 3

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 18, 1996

Dennis Newman
580 Pearl Street
Reading, MA 01867

RE: MUR 4176
Dennis Newman

Dear Mr. Newman:

On December 14, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the amount of your in-kind contributions in the form of staff advances to the Tsongas Committee, Inc. appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect with respect to all respondents still involved in this matter.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

97043790174

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: Dennis Newman

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

An individual's payment from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a political committee is a contribution unless that payment is exempted from the definition of contribution under 11 C.F.R. § 100.7(b)(8). 11 C.F.R. § 116.5.

9704379017 5

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

However, an individual's payment for his or her own transportation or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee will not be considered a contribution if the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made with a personal credit card, or 30 days after the date that expenses were incurred if cash was used. 11 C.F.R. § 116.5(b).2/ If, however, an individual incurs expenses for the subsistence of others who are traveling on behalf of the campaign, a contribution occurs regardless of when the individual pays the expenses or when the committee reimburses the individual. 11 C.F.R. § 116.5; see also Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

Dennis Newman extended $11,169 in staff advances to the Committee, which he incurred to pay for either his own, or others' travel or subsistence expenses related to the campaign. Mr. Newman's advances remained outstanding from 5 days to 11 months.3/

As noted, an advance will automatically be considered an in-kind contribution, if it is untimely reimbursed pursuant to § 116.5(b) or incurred for other than an individual's personal transportation or subsistence. See Explanation and Justification

---

2/ Additionally, an individual's unreimbursed payments up to $1,000 per single election for transportation expenses incurred on behalf of a campaign are not considered to be contributions. See 11 C.F.R. § 100.7(b)(8).

3/ Mr. Newman was allowed the $1,000 travel exemption, pursuant to 11 C.F.R. § 100.7(b)(8).

9704379017 6

of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989). Mr. Newman's advances were not reimbursed timely, and therefore became in-kind contributions.

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

97043790177

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 18, 1996

Andy Paven
20 Moon Street
Boston, MA 02114

RE: MUR 4176
Andy Paven

Dear Mr. Paven:

On December 14, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the amount of your in-kind contributions in the form of staff advances to the Tsongas Committee, Inc. appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect with respect to all respondents still involved in this matter.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

97043790178

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: Andy Paven

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

An individual's payment from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a political committee is a contribution unless that payment is exempted from the definition of contribution under 11 C.F.R. § 100.7(b)(8). 11 C.F.R. § 116.5.

9704379017 9

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

However, an individual's payment for his or her own transportation or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee will not be considered a contribution if the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made with a personal credit card, or 30 days after the date that expenses were incurred if cash was used. 11 C.F.R. § 116.5(b).2/ If, however, an individual incurs expenses for the subsistence of others who are traveling on behalf of the campaign, a contribution occurs regardless of when the individual pays the expenses or when the committee reimburses the individual. 11 C.F.R. § 116.5; see also Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

Andy Paven extended $2,125 in staff advances to the Committee, which were incurred to pay for either his own, or others' travel or subsistence expenses related to the campaign. Mr. Paven's advances were outstanding from 1 day to 5 months.3/

As noted, an advance will automatically be considered an in-kind contribution, if it is untimely reimbursed pursuant to § 116.5(b) or incurred for other than an individual's personal

9704379018C

2/ Additionally, an individual's unreimbursed payments up to $1,000 per single election for transportation expenses incurred on behalf of a campaign are not considered to be contributions. See 11 C.F.R. § 100.7(b)(8).

3/ Mr. Paven was allowed the $1,000 travel exemption, pursuant to 11 C.F.R. § 100.7(b)(8).

transportation or subsistence. See Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989). Mr. Paven's advances were not reimbursed timely, and therefore became in-kind contributions.

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

9704379001 31

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 18, 1996

David Goldman
75 Glen Road
Jamaica Plain, MA 02130

RE: MUR 4176
David Goldman

Dear Mr. Goldman:

On December 14, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the amount of your in-kind contributions in the form of staff advances to the Tsongas Committee, Inc. appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect with respect to all respondents still involved in this matter.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

97043790182

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: David Goldman

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

An individual's payment from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a political committee is a contribution unless that payment is exempted from the definition of contribution under 11 C.F.R. § 100.7(b)(8). 11 C.F.R. § 116.5.

9704379018 3

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

However, an individual's payment for his or her own transportation or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee will not be considered a contribution if the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made with a personal credit card, or 30 days after the date that expenses were incurred if cash was used. 11 C.F.R. § 116.5(b).2/ If, however, an individual incurs expenses for the subsistence of others who are traveling on behalf of the campaign, a contribution occurs regardless of when the individual pays the expenses or when the committee reimburses the individual. 11 C.F.R. § 116.5; see also Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

David Goldman incurred $32,658 in advances charged to his credit card during July 13-17, 1992 and reimbursed on July 27, 1992, for the travel and subsistence of other individuals to the Democratic Convention.

As noted, an advance will automatically be considered an in-kind contribution, if it is untimely reimbursed pursuant to § 116.5(b) or incurred for other than an individual's personal transportation or subsistence. See Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989). Mr.

2/ Additionally, an individual's unreimbursed payments up to $1,000 per single election for transportation expenses incurred on behalf of a campaign are not considered to be contributions. See 11 C.F.R. § 100.7(b)(8).

9704379018 4

Goldman's advances were in-kind contributions because they were incurred for other individuals' travel and subsistence.

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

97043790185

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 18, 1996

Jim Armenakis, Partner
Armenakis & Armenakis
121 Greene Street
New York, NY 10012

RE: MUR 4176
Armenakis & Armenakis

Dear Mr. Armenakis:

On December 14, 1995, the Federal Election Commission found that there is reason to believe Armenakis & Armenakis violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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

97043790186

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jane Whang, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

97043790187

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: Armenakis and Armenakis

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

Contributions made by a partnership shall not exceed the limitations on contributions in 11 C.F.R. § 110.1(b), (c) and (d). A partnership is considered to be a "person" for purposes of enforcing the Act. 2 U.S.C. § 431(11).

9704379018 8

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

A commercial vendor may extend credit to a candidate or political committee, or other person on behalf of the candidate or political committee. 11 C.F.R. § 116.3. An extension of credit is not considered a contribution, provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(a). Additionally, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.7(a)(1)(iii)(A).

An audit conducted by the Commission revealed that the Committee underpaid $14,591 to the New York law firm of Armenakis and Armenakis ("Armenakis"). The law firm obtained signatures on behalf of the Committee for the New York primary ballot, and charged the Committee a total of $45,411, of which the Committee did not pay Armenakis a balance of $13,995. The Committee also did not pay Armenakis $596 of a $15,596 invoice for legal defense concerning a petition challenge. The Committee failed to pay Armenakis a total of $14,591 ($596 + $13,995), resulting in an excessive contribution of $13,591 by the partnership. See 11 C.F.R. § 100.7(a)(1)(iii)(A). Because the partnership was composed of two partners, each partner made an excessive in-kind contribution of $6,295.50, pursuant to 11 C.F.R. §§ 110.1(e) and 116.5.2/

2/ This amount includes reductions for each partner's $1,000 individual contribution.

9704379001389

The Committee paid less than the apparent "usual and normal charge" for the services, creating an in-kind contribution. See 11 C.F.R. § 100.7(a)(1)(iii)(A). The law firm revised its invoice only after the Commission's audit of the Committee. Further, the Committee did not provide persuasive evidence that the invoice was reduced due to non-campaign expenses, nor did it specifically address how certain telephone charges, per diem, travel and food, office and catering charges were not related to the law firm's work for the Committee. Moreover, if a political committee's debt is forgiven or settled for less than owed, a contribution arises, "unless such debt is settled in accordance with the standards set forth at 11 C.F.R. §§ 116.3 and 116.4." 11 C.F.R. § 100.7(b)(4).3/ Based upon the foregoing, it appears that the Committee's debt is an in-kind contribution.

Therefore, there is reason to believe that Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to the Committee.

9704379010C

3/ These regulations require that a committee submit debt settlements to the Commission for its review and acceptance.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 18, 1996

Barry White, Co-Managing Partner
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

RE: MUR 4176
Foley, Hoag & Eliot

Dear Mr. White:

On December 14, 1995, the Federal Election Commission found that there is reason to believe Foley, Hoag & Eliot violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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

9704379011

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jane Whang, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

cc: Gary C. Crossen

97043790102

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: Foley, Hoag & Eliot

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Hakimoa, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

Contributions made by a partnership shall not exceed the limitations on contributions in 11 C.F.R. § 110.1(b), (c) and (d). A partnership is considered to be a "person" for purposes of enforcing the Act. 2 U.S.C. § 431(11). Contributions written on partnership accounts shall be attributed to both the partnership

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

9704379013

and to each partner in direct proportion to his or her share of the partnership profits, and shall not exceed contribution limitations. 11 C.F.R. § 110.1(e).

The Commission's audit revealed that the law firm Foley, Hoag and Eliot, made $21,500 in excessive contributions to the Committee, resulting from 25 checks totaling $22,500 drawn on its partnership account. See 11 C.F.R. § 110.1(e).

During the audit, the Committee challenged the finding concerning the $21,500 in excessive partnership contributions.2/ Specifically, the Committee argued that the contributions were "deducted from each Partner's individual net income distribution" and also from firm profits. Therefore, the Committee contended that these contributions were analogous to the corporate non-repayable drawing accounts that the Commission has recognized as available for individual contributions. See 11 C.F.R. § 102.6(c)(3).

In the Final Audit Report, the Commission noted that the Committee's arguments with respect to the excessive partnership contributions were unpersuasive. The Commission has explicitly noted that contributions made by a partnership check are attributable to both the partnership and the designated individual partners. See Explanation and Justification for 11 C.F.R. § 110.1(e), 52 Fed. Reg. 764-765 (January 9, 1987); see also Legal Comments to the Final Audit Report on the Tsongas for President Committee, Inc., dated October 31, 1994, citing Notice on Corporate Contributions [Transfer Binder] Fed. Election Camp. Fin.

2/ The Committee did not dispute the other findings concerning excessive contributions discovered through review of the Texas account, receipts database, and sample pool.

9704379014

Guide (CCH) ¶ 9064 (Federal Election Commission, August 28, 1978).3/ Thus, the 25 checks are considered to be individual and partnership contributions.

Based upon the foregoing discussion, there is reason to believe that the Commission find reason to believe that Fuley, Hoag and Eliot violated 2 U.S.C. § 441a(a)(1)(A) by contributing $21,500 in excessive partnership contributions.

9704379001 05

3/ See also Advisory Opinions ("AO") 1981-58, 1990-3, and 1992-17. In addition, the Committee's analogizing of the partnership account to a corporate non-repayable drawing account is misplaced. The latter is specifically set up to allow personal withdrawals against salary and profits; however, in the Committee's situation, it appears the firm's profits were not distributed until the end of the year, and that partners were not in normal practice permitted personal withdrawals against the account.

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 18, 1996

Lyn Utrecht
Oldaker, Ryan & Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4176
The Tsongas Committee, Inc. and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

On December 14, 1995, the Federal Election Commission found that there is reason to believe your clients, the Tsongas Committee, Inc. (the "Committee") and S. George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f), and 11 C.F.R. § 9034.6, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable

9704379010 06

cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie Painter or Jane Whang, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Conciliation Agreement

cc: Senator Paul E. Tsongas

9704379001 07

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4176

RESPONDENT: The Tsongas Committee, Inc.,
S. George Kokinos, as treasurer

I. BACKGROUND

This matter was generated by an audit of the Tsongas Committee, Inc., (the "Committee") and S. George Kokinos, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee was the principal campaign committee for Paul Tsongas, a candidate for the presidential nomination of the Democratic Party in 1992.

II. FACTUAL AND LEGAL ANALYSIS

A. UNRESOLVED INDIVIDUAL AND PARTNERSHIP CONTRIBUTIONS

No person shall make contributions to any candidate and his or her authorized political committees, with respect to any election for Federal Office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A).1/ No committee shall knowingly accept any contributions in violation of the contribution limitations imposed by the Act. 2 U.S.C. § 441a(f).

Contributions made by a partnership shall not exceed the limitations on contributions in 11 C.F.R. § 110.1(b), (c) and (d). A partnership is considered to be a "person" for purposes of

1/ A "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. 11 C.F.R. § 100.7(a)(1)(iii). Unless exempted under 11 C.F.R. § 100.7(b), the provision of goods or services without charge or at a charge less than the usual and normal rate for such goods or services is a contribution. Id.

9704379018

enforcing the Act. 2 U.S.C. § 431(11). Contributions written on partnership accounts shall be attributed to both the partnership and to each partner in direct proportion to his or her share of the partnership profits, and shall not exceed contribution limitations. 11 C.F.R. § 110.1(e).

The audit revealed that the Committee accepted excessive contributions totaling $34,849. This amount includes: two excessive contributions totaling $1,100 from an undisclosed bank account in Texas;2/ 12 contributions, totaling $2,830, that had not been refunded;3/ and $9,419 projected from a sample review of excessive contributions.4/ Finally, this amount also includes $21,500 in excessive contributions, resulting from 25 checks totaling $22,500 drawn on a partnership account of a law firm, Foley, Hoag and Eliot. See 11 C.F.R. § 110.1(e).

9704379019

2/ The Committee has filed an amended Statement of Organization to recognize the Texas account that was previously undisclosed.

3/ See Attachment 1 at 40, 41. This amount includes all excessive contributions found on the Committee's database, but excludes one contribution for $50 for which the Committee provided evidence of refunding.

4/ The Commission notified the Committee by letter dated June 2, 1992, that it would use a sampling technique to determine, in whole or in part, the amount of prohibited and excessive contributions received by the Committee. See Letter from Commissioner Aikens to Committee, June 2, 1992. The Commission's letter notified the Committee that it would not recognize untimely refunds, redesignations or reattributions made more than 60 days following the candidate's date of ineligibility or after the date of the receipt of this letter, and that all unresolved prohibited or excessive contributions shall be requested to be paid to the United States Treasury.

During the audit, the Committee challenged the finding concerning the $21,500 in excessive partnership contributions.5/ Specifically, the Committee argued that the contributions were "deducted from each Partner's individual net income distribution" and also from firm profits. Therefore, the Committee contended that these contributions were analogous to the corporate non-repayable drawing accounts that the Commission has recognized as available for individual contributions. See 11 C.F.R. § 102.6(c)(3).

The Final Audit Report did not find the Committee's arguments with respect to the excessive partnership contributions to be persuasive. The Commission has explicitly noted that contributions made by a partnership check are attributable to both the partnership and the designated individual partners. See Explanation and Justification for 11 C.F.R. § 110.1(e), 52 Fed. Reg. 764-765 (January 9, 1987); see also Legal Comments to the Final Audit Report on the Tsongas for President Committee, Inc., dated October 31, 1994, citing Notice on Corporate Contributions [Transfer Binder] Fed. Election Camp. Fin. Guide (CCH) ¶ 9064 (Federal Election Commission, August 28, 1978).6/ Thus, the 25

9704379020C

5/ The Committee did not dispute the other findings concerning excessive contributions discovered through review of the Texas account, receipts database, and sample pool.

6/ See also Advisory Opinions ("AO") 1981-50, 1990-3, and 1992-17. In addition, the Committee's analogizing of the partnership account to a corporate non-repayable drawing account is misplaced. The latter is specifically set up to allow personal withdrawals against salary and profits; however, in the Committee's situation, it appears the firm's profits were not distributed until the end of the year, and that partners were not in normal practice permitted personal withdrawals against the account.

checks are considered to be individual and partnership contributions.

Based upon the foregoing discussion, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting $34,845 in unresolved excessive individual and partnership contributions.

B. EXTENSIONS OF CREDIT

A commercial vendor may extend credit to a candidate or political committee, or other person on behalf of the candidate or political committee. 11 C.F.R. § 116.3. An extension of credit is not considered a contribution, provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(a). Additionally, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.7(a)(1)(iii)(A).

The auditors found that the Committee underpaid $14,591 to the New York law firm of Armenakis and Armenakis ("Armenakis"). The law firm obtained signatures on behalf of the Committee for the New York primary ballot, and charged the Committee a total of $45,411, of which the Committee did not pay Armenakis a balance of $13,995. The Committee also did not pay Armenakis $596 of a $15,596 invoice for legal defense concerning a petition

97043790201

challenge. The auditors concluded that the Committee failed to pay Armenakis a total of $14,591 ($596 + $13,995), resulting in an excessive contribution of $13,591 by the partnership. See 11 C.F.R. § 100.7(a)(1)(iii)(A). Because the partnership was composed of two partners, each partner made an excessive in-kind contribution of $6,295.50, pursuant to 11 C.F.R. §§ 110.1(e) and 116.5.7/

During the audit, the Committee disputed the characterization that it received excessive contributions totaling $13,591 from Armenakis. Specifically, the Committee argued that the law firm had reduced these charges by subtracting certain non-campaign related items in an invoice dated September 1992 that allegedly superseded previous invoices. The Committee further contended that a creditor and a political committee are entitled to settle a disputed debt in this manner, pursuant to 11 C.F.R. § 116.10.

The Committee paid less than the apparent "usual and normal charge" for the services, creating an in-kind contribution. See 11 C.F.R. § 100.7(a)(1)(iii)(A). The Final Audit Report noted that the law firm revised its invoice only after the Commission's audit of the Committee. Further, the Committee did not provide persuasive evidence that the invoice was reduced due to non-campaign expenses, nor did it specifically address how certain telephone charges, per diem, travel and food, office and catering charges were not related to the law firm's work for the Committee. Moreover, if a political committee's debt is forgiven or settled

7/ This amount includes reductions for each partner's $1,000 individual contribution.

97043790202

for less than owed, a contribution arises, "unless such debt is settled in accordance with the standards set forth at 11 C.F.R. §§ 116.3 and 116.4." 11 C.F.R. § 100.7(b)(4).8/ There is no evidence to suggest that the Committee's debt was reduced or treated in accordance with the regulations at sections 116.3 and 116.4. Based upon the foregoing, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from Armenakis.

C. STAFF ADVANCES

An individual's payment from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a political committee is a contribution unless that payment is exempted from the definition of contribution under 11 C.F.R. § 100.7(b)(8).9/ 11 C.F.R. § 116.5. However, an individual's payment for his or her own transportation or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee will not be considered a contribution if the individual is reimbursed within 60 days after the closing date of the billing statement on which the charges first appear if the payment was made with a personal credit card, or 30 days after the date that

9704379020 3

8/ These regulations require that a committee submit debt settlements to the Commission for its review and acceptance.

9/ This provision was based on the Commission's concern that individuals may attempt to circumvent the contribution limitations during critical periods in the campaign when the committee is experiencing financial difficulties by paying committee expenses and not expecting reimbursement for prolonged periods of time. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989).

expenses were incurred if cash was used. 11 C.F.R. § 116.5(b).10/ If, however, an individual incurs expenses for the subsistence of others who are traveling on behalf of the campaign, a contribution occurs regardless of when the individual pays the expenses or when the committee reimburses the individual. 11 C.F.R. § 116.5; see also Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Committee accepted staff advances from four individuals totaling $60,844. These advances were outstanding for a period of 1 to 236 days. This amount includes $32,658 in advances charged to campaign official David Goldman's credit card during July 13-17, 1992 and reimbursed on July 27, 1992, for the travel and subsistence of individuals other than Mr. Goldman to the Democratic Convention. In addition, Bob Krueger advanced $15,892 to the Committee by paying for campaign expenses at the Committee's Texas office, resulting in excessive contributions totaling $14,892.11/ Although the dates on which these expenses were incurred are not clear, the Committee reimbursed these expenses in full on February 27, 1992. Finally, Dennis Newman extended $11,169 and Andy Paven extended $2,125 to the Committee when they paid for either their own, or others' travel or subsistence expenses related to the campaign. Mr. Newman's

9704379020 4

10/ Additionally, an individual's unreimbursed payments up to $1,000 per election for transportation expenses incurred on behalf of a campaign are not considered contributions. See 11 C.F.R. § 100.7(b)(8).

11/ The auditors deducted $1,000 from this amount, due to Mr. Krueger's unused contribution limitation.

advances remained outstanding from 5 days to 11 months, and Mr. Paven's advances were outstanding from 1 day to 5 months.12/

During the audit, the Committee argued that all the expenses of these individuals were refunded as promptly as possible, upon submission of receipts. The Committee asserted that certain expenses were not submitted promptly and it was therefore impossible for the Committee to refund or even be aware of such advances. Moreover, the Committee argues that it should be allowed to reimburse expenses within a reasonable period after receiving documentation for the expenses, because to require a reimbursement in the absence of documentation is an unsound management practice that could lead to violations of the documentation requirements of 11 C.F.R. § 9033.11(b). Finally, the Committee notes that some of the staff advances were reimbursed well within the Commission's time frame for refunding other kinds of excessive contributions, 11 C.F.R. § 103.3, and that there is no justification for treating a contribution from a staff advance more strictly than other forms of excessive contributions.

The Committee misinterprets the regulations; an advance is considered an in-kind contribution if untimely reimbursed pursuant to § 116.5(b), or if incurred for other than an individual's personal transportation or subsistence. See Explanation and Justification of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989). Further, the regulations are explicit that the period

12/ Both these individuals were allowed the $1,000 travel exemption, pursuant to 11 C.F.R. § 100.7(b)(8).

9704379020 5

for reimbursement with respect to certain advances begins from the date of incurrence. See 11 C.F.R. § 116.5. In addition, staff advances, like other excessive in-kind contributions, cannot be refunded under section 103.3.

The staff advances were in-kind contributions because they were either incurred by the individuals for others' travel and subsistence, or were reimbursed beyond the time frames set forth in section 116.5. Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 441a(a)(1)(A) by accepting these excessive contributions in the form of staff advances.

D. PRESS AND U.S. SECRET SERVICE BILLINGS

The costs that a committee incurs in providing transportation, ground services and facilities for media personnel or the Secret Service are qualified campaign expenses. 11 C.F.R. § 9034.6(a). A committee may also receive reimbursement from a media representative for such expenditures as long as it does not exceed the representative's pro rata share of actual costs and services. Further, each media representative shall not pay to the Committee more than 110% of its actual pro rata costs of transportation and services. 11 C.F.R. § 9034.6(b).

The Committee accepted excessive reimbursements from the press and the U.S. Secret Service for its provision of travel services. Specifically, the Committee collected $15,162 from the press and $4,471 from the Secret Service in excess charges.13/ This

---

13/ American Express ("Amex") billed the press $402,850 for its trips, but only collected $382,058. The auditors calculated that $15,162 was collected in excess because the actual maximum amount billable to the press (110% of actual costs) was $366,896. Amex also billed the Secret Service $49,129, but collected $49,567. The auditors calculated that the Secret Service's maximum billable amount was $45,096, and that the Committee collected $4,471 in excess of this amount.

9704379020 6

overcharge reflects a 20% markup that American Express ("Amex") applied to the actual travel costs, 10% of which the Committee contends was actually for part of the actual costs of the services.14/ The Committee argued that it was entitled to the 10% administrative fee in addition to the 10% markup that was charged by Amex. It contended that "the Committee could not have received the travel services without paying that [10%] commission." Committee's Response at 24 (emphasis in original). The Committee also cited a Travel Weekly article that stated that federal election law does not consider payments to a travel agent, including charter air fare, to cover administrative fees. Therefore, the Committee argues, the 10% fee charged by Amex should be considered as the actual costs of travel services.

However, the regulations provide for only a 10% markup of the actual costs of transportation and services, and that the total number of passengers on the plane must be counted in determining the pro rata share per passenger. See Explanation and Justification for 11 C.F.R. § 9034.6, 52 Fed. Reg. 20870 (June 3, 1987). Because Amex provided all travel services, including the

14/ Amex's services included reviewing flight manifests, chartering Committee trips, arranging for ground transportation, lodging and catering, and providing on-plane personnel to track the press. Amex billed the media and the Secret Service directly for the travel, collected the bills and then applied the remittances to the Committee's account. The Amex personnel were also not included in the passenger count for purposes of the pro rata calculation.

9704379020 7

costs of collecting the bills and applying the remittances to the Committee's account, the Committee's argument that it was necessary to charge an additional 10% for administrative costs is unsupported by the record. Further, the Committee's reference to the Travel Weekly article is inapposite, because this article concerns a travel agent who did not provide the full extent of services to a presidential committee that Amex provided in this instance. The Commission rejected the Committee's arguments and found in the Final Audit Report that the Committee should refund the press $15,162 and the Secret Service $4,471.

Therefore, there is reason to believe that the Committee violated 11 C.F.R. § 9034.6 by accepting $15,162 in excess reimbursements from the press.

9704379028

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

96 JAN 4 AM 8:15

SENSITIVE

MEMORANDUM

January 4, 1996

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman KBC
Associate General Counsel

SUBJECT: First General Counsel's Report, MUR 4176

This memorandum is being circulated on a 24 Hour No Objection basis to correct an error in Recommendations #1, 4, 7, and 9 of our memorandum, dated December 4, 1995 and certified on December 14, 1995. The memorandum inadvertantly omitted "S. George Kokinos, as treasurer," as a respondent.

Therefore, the recommendations should read "the Tsongas Committee, Inc., and S. George Kokinos, as treasurer, . . ." and if no objection is received, this Office will amend its notification letter accordingly.

9704329029

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006
(202) 728-1010
FACSIMILE (202) 728-4044
LYN UTRECHT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
96 JAN 29 2 07 PM '96

January 24, 1996

Delanie Painter, Esq.
June Whang, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4176
The Tsongas Committee
and S. George Kokinos, as Treasurer

Dear Ms. Painter and Ms. Whang:

On behalf of the Tsongas Committee and S. George Kokinos as Treasurer, we are respectfully requesting an extension of time to respond to your letter of January 18, 1996 in the above-referenced matter. Due to other upcoming deadlines facing counsel and the time needed to file a sufficient response to the Commission's finding in this matter, we are requesting a 20-day extension, making our response due at close of business on February 26, 1996.

We would greatly appreciate your assistance in this matter.

Sincerely,

Lyn Utrecht

Lyn Utrecht

9704300210

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 31, 1996

Lyn Utrecht, Esq.
Oldaker, Ryan & Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4176
The Tsongas Committee and
S. George Koklines, as Treasurer

Dear Ms. Utrecht:

This is in response to your letter dated January 24, 1996, which we received on January 29, 1996, requesting an extension of 20 days until February 26, 1996 to respond to the Commission's reason-to-believe findings in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on February 26, 1996.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

9704379021 1

ARMENAKIS & ARMENAKIS
ATTORNEYS AT LAW
121 GREENE STREET
THIRD FLOOR
NEW YORK, N.Y. 10012
(212) 228-2600
FAX (212) 982-7815

February 1, 1996

BY FAX 202 219-1043

Jane Whang, Esq.
Federal Election Commission
Washington, DC 20463

Re: MUR 4176
Armenakis & Armenakis

Dear Ms. Whang:

We wish to request an extension of time within which to submit a response to the finding of the Federal Election Commission in the above-captioned matter to enable us to retrieve whatever files we have from storage. At present, we have almost no documents within the office which would clarify matters.

Additionally, my husband, who is more familiar with the matter, has been on trial over the last two weeks.

We hereby request a 20-day extension, to February 27, 1996.

Thank you for any courtesies extended.

Very truly yours,

Diana L. Armenakis

Diana L. Armenakis

DLA/cc

'9704379021 2

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 2 2 36 PM '96

FOLEY, HOAG & ELIOT
ONE POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-2170
TELEPHONE (617) 832-1000
CABLE ADDRESS "FOLEYHOAG"
FACSIMILE (617) 832-7000
TELEX 940900

IN WASHINGTON, D.C.
1615 L STREET, N.W.
SUITE 850
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-0600

BARRY B. WHITE
(617) 832-1254

January 31, 1996

By Telefacsimile
and First Class Mail

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

Re: **MUR 4176 (Foley, Hoag & Eliot); Request For Extension Of Time**

Dear Ms. Whang:

I am writing in response to Chairman Elliott's letter to me dated January 18, 1996. That letter was received at our offices on Monday, January 22, 1996. Accordingly, a response to that letter is now due on Tuesday, February 6, 1996. I am writing to request that the Office of General Counsel extend by twenty (20) days the time for Foley, Hoag & Eliot to respond, that is, until February 26, 1996. I believe you have already discussed the possibility of such an extension with Gregory T. Moffatt of this office.

The above-referenced Matter Under Review pertains, in relevant part, to contributions made by partners of this law firm to the Tsongas Committee in conjunction with Paul Tsongas' 1992 presidential campaign. I am sure you can appreciate that our review of the matter involves certain accounting and legal issues which will take some time to work through before we can respond appropriately. Therefore, granting an extension until February 26, 1996 is both reasonable and in the interest of all the relevant parties.

9704379021 3

Thank you for your attention to this matter. I would appreciate it if you would advise me of your office's decision with respect to this request at your earliest convenience.

Very truly yours,

Barry B. White

cc: Gary C. Crossen, Esq.
Gregory T. Moffatt, Esq.

9704379021 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1996

Barry B. White, Esq.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

RE: MUR 4176
Foley, Hoag & Eliot

Dear Mr. White:

This is in response to your letter dated January 31, 1996, requesting an extension of 20 days until February 26, 1996 to respond to the Commission's reason-to-believe findings in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on February 26, 1996.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jane J. Whang
Attorney

9704379021 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1996

Diana L. Armenakis, Esq.
Armenakis & Armenakis
121 Greene Street
Third Floor
New York, N.Y. 10012

RE: MUR 4176
Armenakis & Armenakis

Dear Ms. Armenakis:

This is in response to your letter dated February 1, 1996, requesting an extension of 20 days until February 27, 1996 to respond to the Commission's reason-to-believe findings in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on February 27, 1996.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jane J. Whang
Attorney

9704379021 6

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 27 11 04 AM '96

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

LYN UTRECHT

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
FEB 26 4 42 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
FEB 27 10 34 AM '96

February 26, 1996

Lee Ann Elliott
Chairman
Federal Elections Commission
Washington, DC 20463

RE: MUR 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as
treasurer

Dear Ms. Elliott:

The Tsongas Committee, Inc. ("the Committee"), and George Kokinos, as Treasurer, hereby submit this response to the reason to believe notification in the aforementioned matter served on the Committee on January 19, 1996. We renew our earlier requests that the Commission take no further action in this matter.

A. UNRESOLVED INDIVIDUAL AND PARTNERSHIP CONTRIBUTIONS

The Federal Election Commission (FEC) found reason to believe that the Committee accepted excessive contributions from a partnership account of a law firm, Foley, Hoag and Eliot. The Committee previously submitted documentation showing that contributions from the law firm partners represented funds within the exclusive control of the individual partners. While a contribution from partnership funds is generally subject to a $1,000 contribution limit, that is not the case if the funds used were in fact already the personal funds of the individual partners. In its response dated December 13, 1993, the Committee explained to the Interim Audit Report that throughout the fiscal year, the law firm distributes only eighty percent of the profits earned to the partners. Twenty percent is held back and is distributed at the end of the fiscal year. Accordingly, the firm held funds of each partner from which these specific political contributions were made at the sole discretion of the contributing partners. Since these were personal funds, of the individuals, there was no violation of 2 U.S.C. § 441a(f). This is supported by the fact that separate checks were drawn for each partner's contribution.

9704379021 7

Accordingly, the Committee submits that the contributions in question were not contributions "by a partnership" within the meaning of 11 C.F.R. § 110.1(e).

B. EXTENSIONS OF CREDIT

The FEC found reason to believe that the Committee accepted an excessive in-kind contribution from the New York law firm of Armenakis and Armenakis ("Armenakis"). Based on the Audit Report, the General Counsel suggests that an excessive contribution may have been made by Armenakis in providing space for the Committee's New York City headquarters. In their report, the auditors allege that the law firm has not been reimbursed for two invoices. The first invoice contained charges of $45,411, of which the Committee did not pay Armenakis a balance of $13,995 of alleged campaign-related expenses. The second invoice was $15,596 for legal defense concerning a petition challenge, of which the Committee did not pay $596. The Audit staff contends that the September 2, 1992 revised invoice reducing the amount sought for reimbursement represents a subsidy to the Committee by the law firm. The audit staff determined that the decrease in the bill for the apparent "usual and normal charge" for services created an in-kind contribution. See 11 C.F.R. § 100.7(a)(1)(iii)(A).

However, the Committee disputed the debt owed the law firm and determined that the Committee never owed the $13,995 in question. The Committee reimbursed the law firm for the work done by the firm in obtaining signatures for the New York primary ballot. The invoice first received by the Committee was incorrect. The reimbursement request submitted by the law firm contained charges for expenses that were not discernibly campaign-related or did not reflect a rational allocation of overhead items, such as telephone charges between the campaign and the ongoing business of the law firm. This was not a reduction of the bill but a re-issue to reflect correct campaign-related charges. The second invoice sent by Armenakis was the correct charge and the disputed figure was not an excessive in-kind contribution from Armenakis, but acknowledgment of a previously inaccurate invoice.

C. STAFF ADVANCES

The FEC found reason to believe that campaign official David Goldman's charges on his American Express card for travel related to the Democratic Convention was an in-kind contribution accepted by the Committee. David Goldman placed a charge of $32,658 on his credit card during July 13-17, 1992 and was reimbursed on July 27, 1992 for the travel and subsistence of himself and others at the Democratic Convention. Mr. Goldman was reimbursed prior to receiving or paying his credit card invoice.

In the Report of the Audit Division on November 18, 1994, the auditors and Commission state that expenses relating to the Tsongas Committee's attendance at the Democratic National Convention held in New York City were incurred after the date of eligibility due to former Senator Tsongas' withdrawal from the presidential race, and therefore are non-qualified campaign expenses. Because the Convention expenses were

9704379021 8

treated as non-qualified, no restrictions exist under Federal election law on who can pay for these expenses. Since the charges were used for travel and subsistence at the Convention, a non-qualified campaign expense, the proposition that David Goldman's American Express charges were an in-kind contribution in the form of an advance is inconsistent with the Commission's previous determination that the Committee could not pay these expenses.

According to 11 C.F.R. § 9032.9 a qualified campaign expense is a purchase or payment incurred by or on behalf of a candidate or his authorized committee made in connection with his campaign or nomination from the date the individual becomes a candidate through the last day of the candidate's eligibility of which neither the incurrence nor payment of which constitutes a violation of any law of the United States. A contribution results when an individual makes a payment for goods or services for the purpose of influencing an election. 11 C.F.R. § 100.7(a)(1).

Although we previously argued that these charges were a qualified campaign expense, the General Counsel rejected these arguments by determining that payment of Convention expenses for an ineligible candidate are non-qualified. Now the General Counsel bases its legal analysis on 11 C.F.R. § 116.5 that states an in-kind contribution results if "an individual pays the transportation, or subsistence expenses of others." But, the Commission cannot have it both ways. As previously stated, the FEC decided that charges for Convention expenses are non-qualified, and thus, the payment of these expenses could not have resulted in an in-kind contribution. The charges either resulted in a qualified campaign expense that is subject to reimbursement or the charges were non-qualified and not subject to limitations on reimbursement.

In addition, prior to the charge payment, Mr. Goldman recalls specifically asking the Audit staff whether he could make the charges in question, and was told yes. Finally, although a contribution technically results when a credit card is used for campaign expenses, Mr. Goldman was reimbursed by the Committee prior to receiving and paying his credit card bill. Thus, the charge was not in fact a contribution because he did not spend any of his own money.

If the Commission changes its analysis and rejects the argument that Democratic Convention expenses are non-qualified when the candidate is no longer eligible, the Commission should acknowledge that the rules on staff advances are not entirely clear on when it is or is not appropriate to place charges on a personal credit card. These unclear rules also resulted in findings by the FEC of advances from Bob Krueger for campaign expenses at the Committee's Texas office, as well as advances from Dennis Newman and Andy Paven. Given the lack of clarity and confusion as to staff advances, no enforcement is warranted.

Thus, no further action is warranted.

9704379021 9

D. PRESS AND U.S. SECRET SERVICE BILLINGS

The FEC found reason to believe that the Committee accepted reimbursements from press personnel beyond the 110% limit of its actual costs for transportation and services. With respect to reimbursement from the press and the U.S. Secret Service, the General Counsel contends that the Committee overcharged for the traveling services and collected excess fees in the sum of $15,162 from the press and $4,471 from the Secret Service. The General Counsel argues the 10% commission mark-up by American Express ("Amex") for the cost of travel precludes the Committee from adding a 10% administrative markup to the cost of travel, as allowed by 11 C.F.R. § 9034.6(b).

Like any travel agent, Amex charges a commission for the services of providing its travelers with tickets and chartering planes. For example, when Amex books a flight for $500 per person, they build a commission into the price. These services could not be secured without the inclusion of this commission. Amex's 10% markup is a standard charge by the travel industry, and this 10% fee is solely for the benefit of the travel agent. The 10% commission charged by Amex does not defray the Committee's administrative costs and does not cover the 10% administrative costs covered in 11 C.F.R. § 9034.6. By preventing the Committee from charging an administrative fee (subject to the reimbursement limit), the Audit staff fails to permit the Committee to recoup its actual costs of providing these services to the media. 52 Fed. Reg. 20871 (June 3, 1987). The 10% Amex mark-up should be considered part of the actual travel costs and should not prevent the Committee from charging a 10% administrative fee.

CONCLUSION

The Committee does not dispute that it mistakenly accepted excessive contributions amounting to $13,349.

If you have any further questions, please contact me at (202) 728-1010.

Sincerely,

Lyn Utrecht

9704379022C

FOLEY, HOAG & ELIOT
ONE POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-2170
TELEPHONE (617) 832-1000
CABLE ADDRESS "FOLEYHOAG"
FACSIMILE (617) 832-7000
TELEX 940643

IN WASHINGTON, D.C.
1615 L STREET, N.W.
SUITE 850
WASHINGTON, D.C. 20036
TELEPHONE (202) 775-0900

February 26, 1996

By Telefacsimile
and First Class Mail

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

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 28 3 24 PM '96

Re: **In the Matter of Foley, Hoag & Eliot; MUR 4176**

Dear Ms. Whang:

Foley, Hoag & Eliot hereby submits this response to the Federal Election Commission's reason to believe notification contained in Chairman Elliott's letter to me as co-managing partner of this law firm, dated January 18, 1996.

On December 14, 1995, the Commission found reason to believe that Foley, Hoag & Eliot made excessive contributions to the Tsongas Committee, Inc., the principal campaign committee for Paul Tsongas' candidacy for the presidential nomination of the Democratic Party during the 1992 election cycle. The contributions were made by specific individual partners, and the Tsongas Committee has previously submitted documentation to the Commission explaining that the contributions represented funds of the individual contributing partners. Although a contribution made from partnership funds is generally subject to a $1,000 limit, that was not the case with the contributions made from the Foley, Hoag & Eliot account, since the funds used were in fact already the funds of the individual partners. Thus, no violation of 2 U.S.C. § 441a(f) and/or 11 C.F.R. § 110.1(e) occurred. This conclusion is further supported by the fact that separate checks were drawn for each partner's contribution.

97043790221

97043790222

Thank you for your attention to this matter.

Very truly yours,

Barry B. White

ARMENAKIS & ARMENAKIS
ATTORNEYS AT LAW

121 GREENE STREET
THIRD FLOOR
NEW YORK, N.Y. 10012

(212) 228-2600
FAX (212) 982-7815

JAMES J. ARMENAKIS*
DIANA L. ARMENAKIS'
NEIL H. TIGER

AMY D. CARLIN
LAURA F. ZINGMOND'

* ALSO ADMITTED IN SC
' ALSO ADMITTED IN NJ

DAVID KATZ
MICHAEL J. ROSENBLATT*
OF COUNSEL

February 27, 1996

BY FAX 202 219-1043
AND FIRST-CLASS MAIL

Jane Whang, Esq.
Federal Election Commission
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Feb 29 12 37 PM '96

Re: MUR 4176
Armenakis & Armenakis

Dear Ms. Whang:

We enclose herewith our response to the letter dated January 18, 1996 from Lee Ann Elliott, Chairman of the Federal Election Commission.

Should you require any other information, please contact the undersigned.

Sincerely,

James J. Armenakis

JJA/CC

Enclosure

9704370902 23

AFFIDAVIT OF JAMES J. ARMENAKIS

I, JAMES J. ARMENAKIS, hereby declare the following:

1. I am a member of the firm of Armenakis & Armenakis, a law firm located in the City and State of New York.

2. During the 1992 Presidential primary campaign, Armenakis & Armenakis provided office space for the Tsongas Committee's New York City headquarters, as well as rendered legal services.

3. In or about 1992, the firm prepared an invoice in the amount of $45,411 and submitted same to Tsongas' Committee in connection with certain legal services rendered in obtaining signatures for the New York primary ballot and for expenses incurred in maintaining office space for the Tsongas Committee.

4. In order to insure that there could be no question of a contribution, an invoice was requested by the Committee, prepared and forwarded.

5. Thereafter, Tsongas' headquarters in Boston disputed certain expenses in that they were not discernably campaign related and/or did not reflect clearly discernable allocation of certain expenses. For example, telephone charges between the campaign and the normal business of the law firm. After some negotiations, the original invoice was corrected, and the Committee paid to the firm the sum of $31,416. Receipt of same is hereby acknowledged.

6. Thereafter, an invoice was issued by Armenakis & Armenakis in the amount of $15,596 in connection with legal services rendered in defending a petition challenge before the administrative tribunal and the courts of the State of New York.

7. The agreed upon amount for said services was $15,000, and a corrected invoice was subsequently issued which was paid by the Committee. At no time did Armenakis & Armenakis intend to or in fact extend credit to the Committee, and to the best of our knowledge, the firm was paid in full. Accordingly, we do not see any violation in the Federal Election law occurring.

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

James J. Armenakis

Executed this 27th day
of February, 1996.

AMY D. CARLIN
Notary Public, State of New York
No. 31-4979604
Qualified in New York County
Commission Expires April 1, 19[illegible]

97043790224

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 1996

James J. Armenakis
Armenakis & Armenakis
121 Greene Street
Third Floor
New York, NY 10012

RE: MUR 4176

Dear Mr. Armenakis:

This is to inform you that I will be leaving the Commission on April 30, 1996. Delanie DeWitt Painter will be representing the Commission in the above-referenced matter. She may be reached at (202) 219-3690.

Sincerely,

Jane J. Whang

Jane J. Whang

9704379022 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 1996

Barry B. White
Foley Hoag & Eliot
One Post Office Square
Boston, MA 02109

RE: MUR 4176

Dear Mr. White:

This is to inform you that I will be leaving the Commission on April 30, 1996. Delanie DeWitt Painter will be representing the Commission in the above-referenced matter. She may be reached at (202) 219-3690.

Sincerely,

Jane J. Whang

9704379022 6

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

Aug 5 4 18 PM '96

SENSITIVE

In the Matter of	)	
The Tsongas Committee, Inc.	)	
and S. George Kokinos, as Treasurer	)	MUR 4176
Armenakis & Armenakis	)	
Foley, Hoag & Eliot	)	

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On December 14, 1995, the Commission found reason to believe that The Tsongas Committee, Inc. ("the Committee") and S. George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 9034.6. Moreover, the Commission found reason to believe, *inter alia*, that the law firm of Armenakis & Armenakis ("Armenakis") violated 2 U.S.C. § 441a(a)(1)(A) and that the law firm of Foley, Hoag & Eliot ("Foley") violated 2 U.S.C. § 441a(a)(1)(A). The Commission approved conciliation agreements and entered into conciliation prior to a finding of probable cause to believe with the Committee, Foley, and Armenakis.

On February 26, 1996, the Committee responded to the reason to believe findings and requested that the Commission take no further action in this matter. Attachment 1.

9704379027

The Office of General Counsel recommends that the Commission take no further action against Armenakis and close the file with respect to that respondent. Moreover, this Office recommends that the Commission take no further action against the Committee for the Armenakis transaction.

Finally, this Office recommends that the Commission deny the Committee's request to take no further action with respect to the remaining violations

97043790228

II. ARMENAKIS & ARMENAKIS

The Commission found reason to believe that Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind partnership contributions to the Committee totaling $13,591. These contributions resulted from differences between the amount Armenakis billed the Committee and the amount the Committee paid the firm for services rendered and office space provided in connection with Senator Tsongas' campaign in the 1992 New York State presidential primary. Armenakis billed the Committee $45,411 for services rendered in obtaining petition signatures for the New York State primary ballot and $15,596 for legal services rendered in defending a petition challenge. The Committee's records indicated, however, that the Committee paid only $31,416 of the $45,411 invoice and $15,000 of the $15,596 invoice. Thus, it appeared that the Committee paid Armenakis a total of $14,591 less than the amount that the Committee had been billed as detailed by the Armenakis invoices.

The Interim Audit Report on the Committee noted the discrepancy and concluded that Armenakis apparently made and the Committee apparently accepted an excessive contribution as a result of the transactions. Following the exit conference at which the Audit Division informed the Committee of the apparent in-kind contribution, Armenakis issued a revised invoice in the amounts previously paid by the Committee. The revised invoice did not indicate the reason for the adjustment. Furthermore, the Committee failed to explain the invoice adjustment in response to the Interim Audit Report. Based on these facts, the Commission found reason to believe that Armenakis made an excessive in-kind contribution of $13,591 ($14,591 - $1,000).

In response to the reason to believe finding, Armenakis submitted to the Commission the sworn affidavit of James J. Armenakis, a member of the firm. *See* Attachment 2 at 2. The Committee also submitted a response to the finding concerning the Armenakis transactions. *See* Attachment 1. Armenakis and the Committee contended that the amounts at issue were disputed debts that were properly resolved. Attachments 1 and 2; *see* 11 C.F.R. § 116.1(d).

In regard to the first invoice for $45,411, the sworn affidavit of James J. Armenakis stated:

> Tsongas' headquarters in Boston disputed certain expenses in that they were not discernibly campaign related and/or did not reflect clearly discernible allocation of certain expenses. For example, telephone charges between the campaign and the normal business of the law firm. After some negotiations, the original invoice was corrected, and the Committee paid to the firm the sum of $31,416.

Attachment 2 at 2. The Committee's response similarly cited the disputed nature of the first invoice, declaring that "the Committee disputed the debt owed the law firm and determined the Committee never owed the $13,995 in question." Attachment 1. The Committee also noted that the revised amount "was not a reduction of the bill but a re-issue to reflect correct campaign-related charges." *Id.*

In regard to the second invoice for $15,596, the Armenakis affidavit stated that the "agreed upon price of said services was $15,000" and a "corrected invoice was subsequently issued . . ."

9704379029

Attachment 2 at 2. The Committee likewise noted that the revised invoice was an "acknowledgment of a previously inaccurate invoice." Attachment 1.

The responses of Armenakis and the Committee demonstrate that the amounts at issue were disputed debts as defined by the Commission's regulations. *See* 11 C.F.R. § 116.1(d). Moreover, the responses show that the disputed debts were negotiated and resolved in the ordinary course of business and the Committee then paid the debts in full.[1] *See* 11 C.F.R. §§ 116.2(b) and 116.10(a). Therefore, when the Committee paid the revised billing amount, no debts were forgiven or settled for less than the amount owed, and no contribution resulted. *See* 11 C.F.R. § 116.7(c)(2) (providing that disputed debts are not subject to the debt settlement process). *Compare* 11 C.F.R. § 100.7(a)(4). No contemporaneous documentation concerning the disputed nature of the debts has been obtained. Nonetheless, in light of the sworn statements of James Armenakis and the Committee's response corroborating those statements, it is evident that the amounts were disputed debts which neither Armenakis nor the Committee intended to be forgiven or settled debts.

Therefore, the Office of General Counsel recommends the Commission take no further action with respect to Armenakis & Armenakis and The Tsongas Committee, Inc., and S. George Kokinos, as treasurer, concerning these violations.

III. FOLEY, HOAG & ELIOT

The Commission found reason to believe that the Foley law firm partnership made excessive partnership contributions to the Committee totaling $21,500 in violation of 2 U.S.C. § 441a(a)(1)(A)

[1] According to its disclosure reports, the Committee made a series of payments for the revised billing amounts and recorded them as standard disbursements. The Committee did not record the additional amounts as debts owed to Armenakis. Thus, it appears the Committee never considered the additional amounts to be outstanding debts.

9704379027C

and that the Committee accepted the excessive contributions in violation of 2 U.S.C. § 441a(f).

In its response, Foley contends that no violation occurred because the contributions were made by separate checks for each partner's contribution and the contributions represented the funds of the individual contributing partners. Attachment 3. Similarly, the Committee argues that the Foley partnership contributions represented 20% of the individual partners' annual profit distribution, which was held back and distributed at the end of the fiscal year. Attachment 1 at 1. Thus, the Committee contends that the contributions should not count against the partnership's contribution limitation, but only against the contribution limitations of the individual partners, and the Committee's receipt of the contributions was not in violation of 2 U.S.C. § 441a(f). *Id.*

9704379023 1

9704379023 2

97043790233

IV. THE TSONGAS COMMITTEE, INC.

A. SUMMARY OF COMMITTEE RESPONSE

The Committee contests the Commission's reason to believe findings, relying primarily on arguments it raised during the audit process.[3] The Committee argues that the Commission should take no further action on the staff advances. The Committee contends that David Goldman's credit card charge of $32,658 for staff travel expenses related to the Democratic National Convention was reimbursed before he received or paid for his credit card invoice. Attachment 1 at 2-3. The Committee further argues that since the Commission determined that expenses related to the Committee's attendance at the convention were non-qualified campaign expenses incurred after the candidate's date of ineligibility, it is inconsistent for the Commission to consider these charges to be in-kind contributions. *Id.*; *see* Final Audit Report on The Tsongas Committee, Inc. (approved

[3] This section omits the Committee's arguments concerning the Armenakis and Foley contributions previously discussed.

December 16, 1994). Citing 11 C.F.R. §§ 9032.9 and 101.7(a)(1), the Committee contends that because the Commission determined that the expenses were non-qualified and not made in connection with the campaign for nomination, the payment of the expenses cannot be an in-kind contribution made for the purpose of influencing an election. *Id.* Thus, the Committee asserts that the expenditures cannot be considered both an in-kind contribution and a non-qualified campaign expense. Moreover, the Committee reiterates its arguments that Mr. Goldman asked the Audit staff whether he could make the charges and was told that he could do so. Further, the Committee contends that the rules at 11 C.F.R. § 116.5 on staff advances are unclear and enforcement of the staff advances by Mr. Goldman and three other staff persons is not warranted. *Id.*

The Committee restates its arguments from the audit process that it did not accept reimbursements from the press in excess of 110% of its actual costs for transportation and services. It contends that it did not overcharge the press for travel by including a 10% American Express commission as part of actual travel costs and adding an additional 10% Committee administrative fee. *See* 11 C.F.R. § 9034.6. The Committee contends that the 10% commission was not an administrative fee, but was a standard travel agent commission, and that the additional 10% administrative fee was necessary for the Committee to recoup its costs of providing the travel services to the media.

97043790234

B. ANALYSIS

The Committee's arguments for taking no further action on the remaining violations in this case are not persuasive. The Commission considered and rejected the Committee's various arguments during the audit process. The Committee has provided no additional evidence to support its contentions.

The Committee's contentions concerning the staff advance by Mr. Goldman do not vitiate that violation. The Committee notes that Mr. Goldman paid for the expenses with his credit card, but was reimbursed within ten to fourteen days, before he received the credit card bill. However, since the expenses were not related solely to Mr. Goldman's own travel expenses, the transaction was an in-kind contribution on the date that he incurred the expenses on his credit card. *See* 11 C.F.R. § 116.5(b).

Moreover, the fact that the advance was for convention travel expenditures which the Commission determined were not "qualified campaign expenses," as that term is defined in the statute and subject to *pro rata* repayment has no bearing on whether the advance was a contribution.[4] It is not inconsistent to consider a staff advance to pay for these non-qualified campaign expenses to be an in-kind contribution. The definitions of the terms "contribution" and "qualified campaign expense" are not the same. Rather, the definition of "contribution" is broader than that of a "qualified campaign expense." *Compare* 2 U.S.C. § 431(8) *with* 26 U.S.C. § 9032(9), *and* 11 C.F.R. § 100.7 *with* 11 C.F.R. §§ 9032.9 *and* 9034.4. For example, contributions can be made after the date of an election to retire net debts, 11 C.F.R. § 110.1(b)(3), but qualified campaign expenses,

[4] The only repayment arising from the audit of the Committee was a *pro rata* repayment of $10,567 for non-qualified campaign expenses totaling $74,531 for the attendance of the candidate and committee staff at the Democratic National Convention.

9704379023 5

other than winding down costs, cannot be incurred after the candidate's date of ineligibility. 11 C.F.R. §§ 9032.9(a)(1); 9034.4(b)(3). Clearly, Mr. Goldman intended to benefit the Committee and influence the election by making the staff advance, 2 U.S.C. § 431(8), and the Committee reimbursed him. Thus, the staff advance meets the definition of contribution even though Mr. Goldman paid for non-qualified campaign expenses. Since the enforcement and repayment processes are separate, the Committee's repayment of these expenditures is irrelevant to whether they should be pursued in the enforcement context. *See Kennedy for President v. FEC*, 734 F.2d 1558, 1565 (D.C. Cir. 1984).

In addition, the Committee's contention that the Commission should not enforce excessive in-kind contributions in the form of staff advances by Mr. Goldman and three other campaign staff members because the rules at 11 C.F.R. § 116.5 on staff advances are unclear is also unconvincing. The Committee provides no evidence or analysis to support its allegation that the rules are not clear, other than its own misinterpretation of the regulations.

Similarly, the Commission has previously considered and rejected the Committee's same arguments concerning the acceptance of $15,162 in excess press reimbursements in violation of 11 C.F.R. § 9034.6. The Committee has not provided any convincing justification for charging the press both a 10% administrative fee and a 10% American Express commission fee. Indeed, it appears that American Express, rather than the Committee, performed the administrative tasks related to the travel. American Express's services included reviewing flight manifests, chartering Committee trips, arranging for ground transportation, lodging, and catering, and providing personnel on the planes to track the press. American Express billed the press and Secret Service directly for the travel, collected the bills, and applied the remittances to the Committee's account.

9704379026

Therefore, the Office of General Counsel recommends that the Commission deny the Committee's request to take no further action in this matter.

As the 30-day period of conciliation negotiations prior to a finding of probable cause to believe has expired, this Office will move on to the next stage of the enforcement process if this recommendation is approved.

V. RECOMMENDATIONS

Deny the request of The Tsongas Committee, Inc. and S. George Kokinos, as treasurer, to take no further action in this matter;

Take no further action against Armenakis & Armenakis for violation of 2 U.S.C. § 441a(a)(1)(A);

Take no further action against The Tsongas Committee, Inc., and S. George Kokinos, as treasurer, for violations of 2 U.S.C. § 441a(f) related to respondent Armenakis & Armenakis;

Close the file with respect to respondent Armenakis & Armenakis;

9704379023 37

Approve the appropriate letters.

5/5/96
Date

Lawrence M. Noble
General Counsel

Staff assigned: Delanie DeWitt Painter
Matthew Tanielian

Attachments

1. Tsongas Committee Response
2. Response of Armenakis & Armenakis with Affidavit of James J. Armenakis
3. Response of Foley, Hoag & Eliot

97043790238

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: AUGUST 6, 1996

SUBJECT: MUR 4176 - GENERAL COUNSEL'S REPORT DATED AUGUST 5, 1996.

The above-captioned document was circulated to the Commission on: Tuesday, August 6, 1996 at 11:00

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

Commissioner Aikens _____

Commissioner Elliott XXX

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Potter _____

Commissioner Thomas _____

This matter will be placed on the meeting agenda for: Tuesday, August 20, 1996

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

9704379023 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4176
The Tsongas Committee, Inc. and	)	
S. George Kokinos, as treasurer;	)	
Armenakis & Armenakis;	)	
Foley, Hoag & Eliot	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 20, 1996, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 4176:

Deny the request of The Tsongas Committee, Inc. and S. George Kokinos, as treasurer, to take no further action in this matter;

Take no further action against Armenakis & Armenakis for violation of 2 U.S.C. § 441a(a)(1)(A);

Take no further action against The Tsongas Committee, Inc., and S. George Kokinos, as treasurer, for violations of 2 U.S.C. § 441a(f) related to respondent Armenakis & Armenakis;

Close the file with respect to Armenakis & Armenakis;

(continued)

9704379021C

Approve appropriate letters.

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

Attest:

8-20-96
Date

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

9704379024 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 29, 1996

James J. Armenakis, Esq.
Armenakis & Armenakis
121 Greene Street
Third Floor
New York, NY 10012

RE: MUR 4176
Armenakis & Armenakis

Dear Mr. Armenakis:

On January 18, 1996, you were notified that the Federal Election Commission found reason to believe that Armenakis & Armenakis violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions totaling $13,591 to The Tsongas Committee, Inc. On February 27, 1996 you submitted a response to the Commission's reason to believe finding.

After considering the circumstances of the matter, the Commission determined on August 20, 1996 to take no further action against Armenakis & Armenakis because it appears that the transaction at issue involved a disputed debt rather than an excessive in-kind contribution, and thus, that no violation of 2 U.S.C. § 441a(a)(1)(A) occurred. Therefore, the Commission has closed its file as it pertains to Armenakis & Armenakis. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

9704379024 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 29, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

On January 18, 1996, you were notified that the Federal Election Commission found reason to believe that your clients, The Tsongas Committee, Inc. and S. George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 9034.6. On the same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter. On February 26, 1996 you submitted a request that no further action be taken in this matter.

On August 20, 1996, the Commission considered your request to take no further action in this matter and determined to reject it. However, the Commission has determined to take no further action with respect to the violation of 2 U.S.C. § 441a(f) related to the transaction involving the Armenakis & Armenakis partnership. The transaction appears to involve a disputed debt rather than an excessive in-kind contribution; thus, it appears that no violation occurred.

Conciliation negotiations prior to a finding of probable cause to believe are limited to a maximum of 30 days. Since more than 30 days have passed, this Office considers these negotiations terminated and will proceed to the next stage of the enforcement process.

Celebrating the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

9704379021 3

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

97043790214

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 19, 1996

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20006

RE: MUR 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on December 14, 1995 the Federal Election Commission found reason to believe that your clients, The Tsongas Committee, Inc. (the "Committee") and S. George Kokinos, as treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 9034.6.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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

97043790215

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

9704379024 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
The Tsongas Committee, Inc.	)	
and S. George Kokinos, as Treasurer	)	MUR 4176

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On December 14, 1995, the Commission found reason to believe that The Tsongas Committee, Inc. (the "Committee") and S. George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 9034.6. On February 26, 1996, the Committee responded to the reason to believe findings and requested that the Commission take no further action in this matter. On August 20, 1996, the Commission denied the Committee's request to take no further action but determined to take no further action with respect to the transaction involving the Armenakis & Armenakis partnership.

The Committee accepted $34,849 in excessive unresolved contributions from individuals and a law firm partnership in violation of 2 U.S.C. § 441a(f). In addition, the Committee accepted excessive in-kind contributions totaling $60,844 in the form of staff advances that were not exempt personal travel and subsistence expenses reimbursed in a timely manner. 2 U.S.C. § 441a(f), 11 C.F.R. § 116.5(b). Therefore, there is probable cause to believe that the Committee violated 2 U.S.C. § 441a(f).

Moreover, the Committee overcharged the press $15,162 for travel expenses by including a 20% administrative cost markup to the actual cost of press travel instead of the permissible 10% administrative markup. Therefore, there is probable cause to believe that the Committee violated 11 C.F.R. § 9034.6 by accepting excessive reimbursements from the press.

97043790217

II. ANALYSIS

A. EXCESSIVE CONTRIBUTIONS

No person shall make contributions to any candidate or his or her authorized committee, with respect to any election for federal office, which in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). A contribution includes a gift, loan, advance, deposit of money or anything of value. 2 U.S.C. § 431(8)(A)(i). No committee shall knowingly accept any contributions in violation of the contribution limitations. 2 U.S.C. § 441a(f).

Contributions made by a partnership shall not exceed the limitations on contributions in 11 C.F.R. §§ 110.1(b), (c) and (d). 11 C.F.R. § 110.1(e)(2)(ii). A partnership is considered to be a "person" for purposes of the contribution limitations. 2 U.S.C. § 431(11). Contributions written on partnership accounts shall be attributed to both the partnership and to each partner in direct proportion to his or her share of the partnership profits, and shall not exceed the contribution limitations. 11 C.F.R. § 110.1(e).

The Committee accepted excessive individual and partnership contributions totaling $34,849. This amount includes two excessive contributions totaling $1,100 from an undisclosed Committee bank account in Texas; 12 contributions totaling $2,830 that had not been properly refunded; and $9,419 projected from a sample review of excessive contributions.[1] Moreover, the total includes $21,500 in excessive partnership contributions, arising from 25 checks totaling

[1] The Commission notified the Committee by letter dated June 2, 1992, that it would use a sampling technique to determine the amount of prohibited and excessive contributions received by the Committee. *See* Letter from Commissioner Aikens to Committee, June 2, 1992. The Commission's letter notified the Committee that it would not recognize untimely refunds, redesignations or reattributions made more than 60 days following the candidate's date of ineligibility or after the date of receipt of the letter, and that all unresolved prohibited or excessive contributions should be paid to the United States Treasury.

97043790248

$22,500 drawn on a partnership account of the law firm of Foley, Hoag & Eliot ("Foley"). *See* 11 C.F.R. § 110.1(e).

The Committee contends that the Foley partnership contributions represented 20% of the individual partners' annual profit distribution, which was held back and distributed at the end of the fiscal year. Thus, the Committee argues that the contributions should not count against the partnership's contribution limitation, but only against the contribution limitations of the individual partners, and that the Committee's receipt of the contributions did not violate 2 U.S.C. § 441a(f). The Committee further asserts that the contributions were analogous to contributions from corporate non-repayable drawing accounts. However, the Committee does not contest the excessive individual contributions discovered through review of the Texas account, receipts database, and sample pool.

The Committee's arguments concerning the excessive partnership contributions are not persuasive. Contributions made by a partnership check are attributable to both the partnership and the designated individual partners. 11 C.F.R. § 110.1(e); *see* Explanation and Justification for 11 C.F.R. § 110.1(e), 52 *Fed. Reg.* 764-765 (January 9, 1987); *see also* Advisory Opinions ("AO") 1981-50, 1982-13, 1990-3, and 1992-17. Based on the information provided by the Committee and the partnership, it does not appear that the partnership funds used for the contributions were in the possession of the individual partners or available for their use before the end of the fiscal year or that the funds were segregated from other partnership funds.

Moreover, the Committee's analogy to individual contributions from corporate non-repayable drawing accounts is not apt. *See* 11 C.F.R. § 102.6(c)(3). A corporate non-repayable drawing account is an account specifically established to permit corporate employees "personal draws against salary, profits or commissions." AO 1980-6; Commission's Notice on Corporate

9704379024 9

Contributions [Transfer Binder] Federal Election Campaign Financing Guide (CCH) ¶ 9064 (Federal Election Commission, Aug. 28, 1978). Conversely, the Foley partnership profits were not distributed until the end of the year, and partners were not in normal practice permitted personal withdrawals against the account. Therefore, there is probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting $34,849 in unresolved excessive individual and partnership contributions.

B. STAFF ADVANCES

Payments made by an individual, including advances by a committee staff person, from his or her personal funds, including a personal credit card, for goods, services, or other expenditures made on behalf of a candidate or political committee are in-kind contributions subject to the contribution limitations of 2 U.S.C. § 441a(a)(1)(A). 2 U.S.C. § 431(8)(A); 11 C.F.R. § 116.5; *see* Explanation and Justification of 11 C.F.R. § 116.5(b), 55 *Fed. Reg.* 26382 (June 27, 1989). Advances by committee staff or other individuals to pay for goods or services provided to a committee are in-kind contributions unless the payment is for the individual's own campaign-related transportation and subsistence costs and the individual is reimbursed within 60 days after the closing date of the billing statement for payments made by credit card or within 30 days after the expenses were incurred for other forms of payment. 11 C.F.R. § 116.5(b).

The Committee accepted staff advances from four individuals totaling $60,844. These advances were outstanding for a period of 1 to 236 days. The amount of the staff advances includes $32,658 in advances charged to campaign official David Goldman's personal credit card between July 13-17, 1992 and reimbursed on July 27, 1992. Mr. Goldman paid for the travel and subsistence expenses of a number of individuals who attended the Democratic National Convention. In addition, Bob Krueger advanced $15,892 to the Committee to pay campaign

9704379025C

expenses related to the Committee's Texas office.[2] Although the dates when Mr. Krueger incurred these expenses are not clear, the Committee reimbursed him in full on February 27, 1992. Finally, Dennis Newman made advances of $11,169 and Andy Paven made advances totaling $2,125 for travel and subsistence expenses that were either not reimbursed in a timely manner or were related to other individuals. Mr. Newman's advances remained outstanding from 5 days to 11 months, and Mr. Paven's advances were outstanding from 1 day to 5 months.[3]

The Committee asserts that the staff advances were refunded promptly when the staff submitted receipts, and that it was impossible for the Committee to refund expenses that were not submitted properly. The Committee argues that it should be allowed to reimburse expenses within a reasonable period after receiving documentation for the expenses because reimbursement without documentation could lead to violations of the documentation requirements of 11 C.F.R. § 9033.11(b). The Committee further asserts that reimbursement of staff advances should be permissible under the same time limitations as refunds of other kinds of excessive contributions. *See* 11 C.F.R. § 103.3. In addition, the Committee contends that the rules at 11 C.F.R. § 116.5 on staff advances are unclear.

Moreover, the Committee contends that David Goldman's credit card charge of $32,658 for staff travel expenses related to the Democratic National Convention was reimbursed before he received or paid for his credit card invoice. The Committee argues that since the Commission determined that expenses related to the Committee's attendance at the convention were non-qualified campaign expenses incurred after the candidate's date of ineligibility, it is inconsistent

---

[2] The Commission deducted $1,000 from this amount to account for Mr. Krueger's unused contribution limitation.

[3] The Commission allowed both Mr. Newman and Mr. Paven the $1,300 travel exemption. 11 C.F.R. § 100.7(b)(8).

9704379025 1

for the Commission to consider these charges to be in-kind contributions. *See* Final Audit Report on The Tsongas Committee, Inc. (approved December 16, 1994). Citing 11 C.F.R. §§ 9032.9 and 101.7(a)(1), the Committee contends that because the Commission determined that the expenses were non-qualified and not made in connection with the campaign for nomination, the payment of the expenses cannot be an in-kind contribution made for the purpose of influencing an election. Thus, the Committee asserts that the expenditures cannot be considered both an in-kind contribution and a non-qualified campaign expense. In addition, the Committee asserts that Mr. Goldman asked the Commission's Audit staff whether he could make the charges and was told that he could do so.

The Committee misinterprets the regulations on staff advances. An advance is an in-kind contribution if it is incurred for any campaign-related expense other than for an individual's own transportation or subsistence expenses. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 116.5(b). Even if an advance is for an individual's own travel expenses, it will still be an in-kind contribution if the expenses are not reimbursed timely pursuant to § 116.5(b). A staff advance in excess of the contribution limitations, which is not for exempt travel and subsistence reimbursed in a timely manner under 11 C.F.R. § 116.5(b), is an excessive in-kind contribution on the date that it is incurred. 11 C.F.R. § 116.5. Thus, if an advance was not for an individuals' own travel expenses, it is irrelevant whether the Committee reimbursed the individual or when the staff person submitted the receipts to the Committee. Moreover, the Committee must reimburse staff advances related to an individual's travel and subsistence expenses within the time limitations delineated at section 116.5(b) or the advances will be in-kind contributions, regardless of when the staff person submits a reimbursement request. Staff advances, like other excessive in kind contributions, cannot be refunded under section 103.3. The Committee provides no evidence or

97043790252

analysis to support its allegation that the rules on staff advances are not clear, other than its own misinterpretation of the regulations.

The Committee's contentions concerning the staff advance by Mr. Goldman do not vitiate that violation. Although Mr. Goldman may have been reimbursed within 10 to 14 days, before he received his credit card bill for the expenses, the expenses were not related solely to his own travel expenses.[4] Thus, the transaction was an in-kind contribution on the date that he incurred the expenses on his credit card. *See* 11 C.F.R. § 116.5(b).

Moreover, the fact that the advance was for convention travel expenditures which the Commission determined were not "qualified campaign expenses," as that term is defined in the statute, and subject to *pro rata* repayment has no bearing on whether the advance was a contribution.[5] It is not inconsistent to consider a staff advance to pay for these non-qualified campaign expenses to be an in-kind contribution. The definitions of the terms "contribution" and "qualified campaign expense" are not the same. Rather, the definition of "contribution" is broader than that of a "qualified campaign expense." *Compare* 2 U.S.C. § 431(8) *with* 26 U.S.C. § 9032(9), *and* 11 C.F.R. § 100.7 *with* 11 C.F.R. §§ 9032.9 *and* 9034.4. For example, contributions can be made after the date of an election to retire net debts, 11 C.F.R. § 110.1(b)(3), but qualified campaign expenses, other than winding down costs, cannot be incurred after the candidate's date of ineligibility. 11 C.F.R. §§ 9032.9(a)(1); 9034.4(b)(3). Clearly, Mr. Goldman intended to benefit the Committee and influence the election by making

---

[4] The Committee's contention that the Commission's Audit staff gave approval for Mr. Goldman's staff advance is not persuasive. The Audit staff have no recollection of giving the Committee approval for this method of paying the convention travel expenditures.

[5] In the audit of the Committee, the Commission determined that the Committee must make a *pro rata* repayment of $10,567 for non-qualified campaign expenses totaling $74,531 for the attendance of the candidate and committee staff at the Democratic National Convention.

9704379025 53

the staff advance, 2 U.S.C. § 431(8), and the Committee reimbursed him. Thus, the staff advance meets the definition of contribution even if Mr. Guilfoyle *paid* for non-qualified campaign expenses.

Therefore, there is probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting $60,844 in excessive in-kind contributions in the form of staff advances.

C. PRESS BILLINGS

The costs that a committee incurs in providing transportation, ground services and facilities for media personnel are qualified campaign expenses. 11 C.F.R. § 9034.6(a). A committee may receive reimbursement from a media representative for such expenditures as long as it does not exceed the representative's *pro rata* share of the actual travel costs and services. Each media representative shall not pay more than 110% of the actual *pro rata* costs of its transportation and services. 11 C.F.R. § 9034.6(b).

The Committee accepted $15,162 in excessive reimbursements from the press for travel services. This overcharge reflects a 20% markup that American Express Travel Management Services ("American Express"), the Committee's travel agency, applied to the actual transportation costs. The 20% markup included a 10% American Express commission and an additional 10% Committee administrative fee. American Express' services to the Committee included reviewing flight manifests, chartering trips, arranging ground transportation, lodging and catering, and providing on-plane personnel to track the press. American Express billed the press directly for the travel expenses, collected the bills and applied the remittances to the Committee's account.* American Express billed the press $402,850, but collected only

---

* American Express personnel were not included in the passenger count for purposes of the *pro rata* calculation.

9704379024

$382,058. The maximum amount billable to the press was $366,896. Thus, the Committee collected $15,162 in excessive charges from the press.

The Committee contends that it did not accept reimbursements from the press in excess of 110% of its actual costs for transportation and services because 10% of the 20% American Express markup was for the actual costs of the travel services. The Committee asserts that the 10% American Express commission was not an administrative fee, but was a standard travel agency commission and part of the actual cost of the travel. The Committee claims that it is entitled to an additional 10% administrative fee to recoup the cost of providing the travel services to the media.

The Committee has not provided any convincing justification for charging the press both a 10% administrative fee and a 10% American Express commission fee. The regulations provide for only a 10% markup of the actual costs of transportation and services. *See* Explanation and Justification for 11 C.F.R. § 9034.6, 52 *Fed. Reg.* 20870 (June 3, 1987). The billable cost is 110% of the *pro rata* share per passenger based on the total number of passengers on the plane. *Id.* Indeed, it appears that American Express, rather than the Committee, performed all of the administrative tasks related to the travel, including the costs of collecting the bills and applying the remittances to the Committee's account. Since it does not appear that the Committee performed the administrative tasks related to the travel, there is no basis for it to charge the press an additional 10% administrative fee.

Therefore, there is probable cause to believe that that the Committee violated 11 C.F.R. § 9034.6 by accepting $15,162 in excessive reimbursements from the press.

9704437902966

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Tsongas Committee Inc. and S. George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from individuals and a partnership, and excessive in-kind contributions in the form of staff advances; and

2. Find probable cause to believe that the Tsongas Committee Inc. and S. George Kokinos, as treasurer, violated 11 C.F.R. § 9034.6 by accepting excessive reimbursements from the press.

11/19/96
Date

Lawrence M. Noble
General Counsel

97043790256

OLDAKER, RYAN, PHILLIPS & UTRECHT
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

OFFICE OF
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
Dec
Nov 27 9 32 AM '96

November 27, 1996

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

RE: MURs 3585, 4176
The Tsongas Committee, Inc. and
S. George Kokinos, as treasurer

Dear Ms. Painter:

On behalf of the Tsongas Committee, Inc., and S. George Kokinos, as treasurer, this letter is to request an extension of time until January 15, 1997, in which to respond to the General Counsel's briefs in the above-referenced matters.

This extension is necessary for counsel to adequately prepare comprehensive legal and factual responses to General Counsel's briefs. In addition, counsel is working with short staff due to the holiday season, has a substantial backload of other assignments and already set vacation plans of three weeks during this period.

In light of these circumstances, we request an extension until January 15, 1997, in which to respond to these matters. I would greatly appreciate your assistance in granting this request.

Should you have any questions, please contact me. Thank you.

Respectfully yours,

Lyn Utrecht

Lyn Utrecht

97043790257

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1996

BY FACSIMILE TRANSMISSION AND CERTIFIED MAIL

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MURs 3585 and 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated November 27, 1996 requesting an extension of time until January 15, 1997 for your clients, the Tsongas Committee, Inc. and S. George Kokinos, as treasurer (the "Committee") to respond to the General Counsel's probable cause briefs in MURs 3585 and 4176. You state that the extension of time is necessary because of staff constraints, vacation plans and "a substantial backload of other assignments."

Considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations, the Office of the General Counsel cannot grant your full request, but can only agree to a 20 day extension. Accordingly, the response briefs are due by close of business on December 26, 1996.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter

Delanie DeWitt Painter
Attorney

9704379025 8

OLDAKER, RYAN, PHILLIPS & UTRECHT
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 13 10 27 AM '96

December 11, 1996

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

RE: MURs 3585 and [redacted]
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Painter:

Yesterday we received your letter denying our request for an extension of time until January 15, 1997, to respond to the General Counsel's probable cause briefs in the above-referenced matters. When the Commission chooses to come forward on such matters during a period of time when there is enormous clean-up on the presidential election campaign and other outstanding enforcement actions pending before the Commission, we believe that it is grossly unfair for you not to grant us a reasonable amount of time to respond to this matter.

the two staff people that I rely primarily on to assist me in these matters are law students who will be out of the office during this period due to final exams. Moreover, this is the holiday season when my clients and myself have family obligations and other preset vacation plans.

The only reason you give for denying this request is that the Commission has a duty to act expeditiously in the conduct of investigations. However, we fail to see this as a valid reason for denying our request since the circumstances surrounding these matters

97043790259

occurred more than four years ago and arose out of the Final Audit Report, issued on December 28, 1994. Furthermore, if you are willing to grant an extension until December 26, 1996, it is difficult to see how an extension until January 15, 1996, will prejudice the Commission which will be out on recess and unable to sign off on any actions pertaining to this matter during a substantial portion of this time.

If you are unable to grant this extension, then we request that you bring this matter to the Commission's attention for consideration.

Sincerely,

Lyn Utrecht

Lyn Utrecht

97043790216C

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 12, 1996

BY FACSIMILE TRANSMISSION AND CERTIFIED MAIL

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MURs 3585 and 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated December 11, 1996 requesting that the Office of the General Counsel reconsider your request for an extension of time until January 15, 1997 for your clients, the Tsongas Committee, Inc. (the "Committee") and S. George Kokinos, as treasurer to respond to the General Counsel's probable cause briefs in MURs 3585 and 4176. This Office previously granted you a 20-day extension of time until December 26, 1996. The 20-day extension of time this Office granted to you was reasonable and consistent with other matters. Moreover, the limited amount of information you initially provided did not justify a longer extension of time.

In your December 11, 1996 letter you provide additional information to support your extension of time request. Based on this additional information concerning your other pending enforcement cases before the Commission that have responses due during the month of December, the Office of the General Counsel has granted your extension of time request. Accordingly, the response briefs are due by close of business on January 15, 1997.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter
Attorney

97043790241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 15 4 39 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4176
The Tsongas Committee, Inc.	)	
and George Kokinos, as Treasurer	)	

RESPONSE OF THE TSONGAS COMMITTEE, INC. AND GEORGE S. KOKINOS, AS TREASURER, TO GENERAL COUNSEL'S BRIEF RECOMMENDING PROBABLE CAUSE

97043790262

The Tsongas Committee, Inc. ("the Committee"), and George Kokinos, as Treasurer, hereby submit this response to the probable cause to believe recommendation in the afore-mentioned matter served on the Committee on November 19, 1996. On January 18, 1996, the Federal Election Commission ("FEC" or "the Commission") found reason to believe that the Committee accepted excessive contributions from the firm of Armenakis & Armenakis. On August 29, 1996, the Commission decided the transaction involved a disputed debt, rather than an excessive contribution and decided to take no further action with this issue. We renew our earlier requests that the Commission take no further action in the remaining matters.

A. Unresolved Individual and Partnership Contributions

The General Counsel is recommending probable cause to believe that the Committee accepted excessive contributions from a partnership account of a law firm, Foley, Hoag and Eliot. The Committee reasserts its previous arguments that contributions

from the law firm partners represented funds within the exclusive control of the individual partners. Even though twenty percent of the funds were held by the Firm until the end of the year, these funds constituted the personal funds of the individuals, and thus, use of these funds by an individual prior to the end of the year did not violate 2 U.S.C. § 441a(f). The fact that separate checks were drawn for each partner's contribution further supports that the funds used to make contributions were under the exclusive control of the partner. Accordingly, the Committee submits that the contributions in question were not contributions "by a partnership" within the meaning of 11 C.F.R. § 110.1(e), and no further action is warranted.

B. Staff Advances

The General Counsel is recommending probable cause to believe that campaign official David Goldman's charges on his American Express card for travel related to the Democratic Convention was an in-kind contribution accepted by the Committee. In the General Counsel's brief, the General Counsel determined that Mr. Goldman intended to benefit the Committee and influence the election by incurring the charges reimbursed by the Committee. The General Counsel is making totally inconsistent arguments with regard to the payment of convention expenses.

Using the Commission's analysis from the Report of the Audit Division on November 18, 1994, the charges incurred by Mr. Goldman should be treated as non-qualified campaign expenses. Since these charges were for travel and subsistence at the convention, a non-qualified campaign expense, Mr. Goldman's charges should not be

9704379026 3

subject to the contribution limits imposed on a Committee. Because convention related expenses are non-qualified, Federal election law imposes no restrictions on who can pay for these expenses. It is inconsistent to find Mr. Goldman's charges an in-kind contribution when the Commission previously determined that the Committee could not pay for these expenses.

The General Counsel further states that it is still permissible to treat these credit card charges as a contribution under § 116.5 even if it was for non-qualified campaign expenses. The General Counsel explains that a contribution as defined in 11 C.F.R. § 100.7(a)(1) is much broader than a "qualified campaign expense" as defined in 11 C.F.R. § 9032.9 and 9034.4. Other than winding down costs, a qualified campaign expense cannot be incurred after an election even though contributions may be accepted after the candidate's date of ineligibility. Despite this distinction, the FEC previously resolved that charges for convention expenses are non-qualified, and thus, the payment of these expenses could not result in an in-kind contribution. It is manifestly unfair to say that neither the campaign nor an individual may pay these expenses. The Commission must decide whether convention-related expenses, after a candidate is ineligible for office are qualified campaign expenses or not. The charges should either result in a qualified campaign expense that is subject to reimbursement or a non-qualified campaign expense that is not subject to limitations on reimbursement. By analogy, delegates to a convention are permitted to raise funds--without applicable contribution limits--to defray convention expenses. To say that a presidential campaign cannot pay for its former candidate and

97043790264

staff to attend, and then to penalize an individual for paying those expenses makes no sense.

Additionally, the General Counsel's office refuses to acknowledge that prior to the transaction, Mr. Goldman specifically asked the Audit staff whether such credit card charges were permissible.

Thus, no further action is warranted.

C. Press and U.S. Secret Service Billings

The General Counsel argues the 10% commission mark-up by American Express ("Amex") for the cost of travel precludes the Committee from adding a 10% administrative markup to the cost of travel, as allowed by 11 C.F.R. § 9034.6(b). The Commission alleges that the Committee overcharged for the traveling services and collected excess fees in the sum of $15,162 from the press and $4,471 from the Secret Service. As stated in our February 26, 1996 response, like any travel agent, Amex charges a commission for the services of providing its travelers with tickets and chartering planes. For example, when Amex books a flight for $500 per person, they build a commission into the price. These services could not be secured without the inclusion of this commission. Amex's 10% markup is a standard charge by the travel industry, and this 10% fee is solely for the benefit of the travel agent. The 10% commission charged by Amex does not defray the Committee's administrative costs and does not cover the 10% administrative costs covered in 11 C.F.R. § 9034.6. By preventing the Committee from charging an administrative fee (subject to the reimbursement limit), the Audit staff fails to permit the

97043790265

Committee to recoup its actual costs of providing these services to the media. 52 Fed Reg. 20871 (June 3, 1987). The 10% Amex mark-up should be considered part of the actual travel costs and should not prevent the Committee from charging a 10% administrative fee.

Conclusion

The Committee does not dispute that it mistakenly accepted excessive contributions amounting to $13,349.

Respectfully submitted,

Gary C. Crossen
Gregory T. Moffatt
Foley, Hoag, & Eliot
One Post Office Square
Boston, MA 02109

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

97043790266

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

JAN 16 1 59 PM '97

In the Matter of	)	
	)	
Foley, Hoag & Eliot	)	MUR 4176
	)	

GENERAL COUNSEL'S REPORT **SENSITIVE**

I. BACKGROUND

On December 14, 1995, the Commission found reason to believe that the law firm of Foley, Hoag & Eliot ("Foley") violated 2 U.S.C. § 441a(a)(1)(A). The Commission entered into conciliation with Foley prior to a finding of probable cause to believe and approved a conciliation agreement

9704379002667

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Foley, Hoag & Eliot;

2. Close the file as to this respondent; and

3. Approve the appropriate letter.

1/16/97
Date

Lawrence M. Noble
General Counsel

Attachment
1. Conciliation Agreement, letter and civil penalty check

Staff assigned: Delanie DeWitt Painter

97043790268

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Foley, Hoag & Eliot.) MUR 4176

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 22, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4176:

1. Accept the conciliation agreement with Foley, Hoag & Eliot, as recommended in the General Counsel's Report dated January 16, 1997.

2. Close the file as to this respondent.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated January 16, 1997.

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

Attest:

1-23-97
Date

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

Received in the Secretariat: Thurs., Jan. 16, 1997 1:59 p.m.
Circulated to the Commission: Thurs., Jan. 16, 1997 4:00 p.m.
Deadline for vote: Wed., Jan. 22, 1997 4:00 p.m.

bjr

97043790269

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 31, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Gregory T. Moffatt, Esq.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109-2170

RE: MUR 4176

Dear Mr. Moffatt:

On January 23, 1997, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of Foley, Hoag & Eliot in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Foley, Hoag & Eliot.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

Enclosure
Conciliation Agreement

9704379027C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Foley, Hoag, and Eliot	)	MUR 4176
	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Foley, Hoag and Eliot ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A).

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

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

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

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

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

1. Paul E. Tsongas was a candidate for the nomination of the Democratic Party for the office of President of the United States for the election held in November 1992. The Tsongas Committee, Inc. (the "Committee") was the authorized committee of Mr. Tsongas (the

97043790271

"Candidate") and, as such, was authorized to receive contributions on behalf of Mr. Tsongas.

2. S. George Kokinos was the treasurer of the Committee.

3. Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is unlawful for a person to make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

4. Pursuant to 2 U.S.C. § 431(11), a partnership is a "person." Additionally, contributions written on partnership accounts are attributed to both the partnership and each partner in direct proportion to his or her share of the partnership profits, and shall not exceed contribution limitations. 11 C.F.R. § 110.1(e).

5. In its review of the Committee's receipts, the Commission found that the Respondent, a law firm partnership, made 25 contributions to the Committee totaling $22,500. Thus, the Respondent exceeded its contribution limitation by $21,500 pursuant to 2 U.S.C. § 441a(a)(1)(A).

6. Respondent contends that:

a. The contribution checks drawn on the Foley, Hoag & Eliot account were given to the Committee at the direction of individual partners of the firm who chose to make contributions.

b. The contributions were deducted from each partner's individual net income distribution. The law firm distributes only eighty percent of the profits earned by the equity partners during the fiscal year. The remaining twenty percent is held back and distributed at the end of the fiscal year. Thus, the firm held funds allocable to each equity partner from which specific political contributions were made. One semi-retired partner, who was paid one hundred percent of his fixed compensation monthly, contributed $500 which was deducted from a year end bonus.

97043790272

V. Respondent violated 2 U.S.C. § 441a(a)(1)(A) by contributing $21,500 in excessive contributions to the Committee.

VI. Respondent contends that the violation was not knowing and willful.

VII. Respondent will pay a civil penalty to the Federal Election Commission in the amount of $8,800 pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

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

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

1/30/97
Date

97043790273

FOR THE RESPONDENT:

Mark F Clark — December 31, 1996

(Name) — Date

(Position) Co-Managing Partner

9704379902274

9704379 0275

FOLEY, HOAG & ELIOT LLP

INVOICE	INVOICE DATE	CLIENT/CASE	AMOUNT
CK21670	12/31/96		8,800.00

DATE 12/31/96 CHECK#: 126423 TOTAL $8,800.00

AN ARTIFICIAL WATERMARK IS PRESENT ON THE REVERSE SIDE

FOLEY, HOAG & ELIOT LLP
ONE POST OFFICE SQUARE
BOSTON, MA 02109

BANK OF BOSTON
THE FIRST NATIONAL BANK OF BOSTON
BOSTON, MASSACHUSETTS 02110
5-39/110

126423

DATE	CHECK NO.	AMOUNT
12/31/96	126423	$8,800.00

EIGHT THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS

PAY TO THE ORDER OF FEDERAL ELECTION COMMISSION

TWO SIGNATURES REQUIRED OVER $20,000.00

OLDAKER, RYAN, PHILLIPS & UTRECHT
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 3 5 41 PM '97

January 30, 1997

Lee Ann Elliott
Chairman
Federal Elections Commission
Washington, DC 20463

RE: MUR 3585
MUR 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as
treasurer

Dear Ms. Elliott:

I am writing on behalf of the Tsongas Committee, Inc. ("the Committee") and S. George Kokinos, as treasurer.

The Federal Election Commission ("the Commission") currently has two pending MURs pertaining to the Tsongas Committee. The Committee responded to the General Counsel's recommendation for probable cause under MUR 3585 and MUR 4176 on Wednesday, January 15, 1997. As you know, on Saturday, January 18, 1997, Senator Paul Tsongas passed away. Due to his unfortunate death, we request that the Commission take no further action in these matters.

If you have any further questions, please contact me.

Sincerely,

Lyn Utrecht

Lyn Utrecht

9704379902276

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 26 11 35 AM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nicholas A. Rizzo, Jr.,	)	MUR 3585
	)	MUR 4176
the Tsongas Committee, Inc.	)	
and George Kokinos, as Treasurer	)	

SENSITIVE

97043790277

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The Tsongas Committee, Inc. (the "Committee"), and S. George Kokinos, as treasurer, are respondents in two open enforcement matters, Matter Under Review ("MUR") 3585 and MUR 4176. The Office of General Counsel recommends that the Commission take no further action against the Committee and close the file in MUR 3585 and MUR 4176. Moreover, with respect to the only other remaining respondent in MUR 3585, this Office recommends that the Commission find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(1)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and 116.5(b), but take no further action and close the file.

II. THE TSONGAS COMMITTEE, INC.

A. BACKGROUND

On November 29, 1994, the Commission found reason to believe that the Committee violated 2 U.S.C. §§ 432(h)(1), 441a(f), and 441b(a) in MUR 3585.[1] On January 27, 1995, the Committee responded to the Commission's reason to believe findings and requested that the Commission take no further action. On July 18, 1995, the Commission denied the Committee's

---

[1] Throughout this report, the "Act" and the "FECA" refer to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-55.

request to take no further action with respect to the Committee. On the same date, the Commission further found reason to believe that the Committee violated 2 U.S.C. §§ 441a(f) and 434(b). On September 5, 1995, the Committee responded to these reason to believe findings. On November 19, 1996, this Office sent a General Counsel's Brief to the Committee recommending that the Commission find probable cause to believe that the violations occurred in MUR 3585. The Committee responded to the Brief on January 15, 1997. Attachment 1.

In a separate matter involving the Committee, MUR 4176, the Commission found reason to believe on December 14, 1995 that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 9034.6. On February 26, 1996, the Committee responded to the reason to believe findings and requested that the Commission take no further action in that matter. On August 20, 1996, the Commission denied the Committee's request to take no further action but determined to take no further action with respect to one partnership transaction. On November 19, 1996, this Office sent a General Counsel's Brief to the Committee recommending that the Commission find probable cause to believe that the violations occurred in MUR 4176. The Committee responded to the Brief on January 15, 1997. Attachment 2.

On January 18, 1997, the candidate, Senator Paul E. Tsongas, died after a long illness. By letter dated January 30, 1997, counsel for the Committee requested that the Commission take no further action against the Committee in MUR 3585 and MUR 4176. Attachment 3.

The Committee's violations in MUR 3585 are inextricably linked with the violations by its agent, Nicholas Rizzo Jr., the Committee's chief fundraiser.[2] Mr. Rizzo was the Committee's

[2] Section III of this report discusses Mr. Rizzo's violations and this Office's recommendations with respect to him.

9704379028

agent with actual and apparent authority to accept contributions, make expenditures, and conduct diverse financial transactions.

The Committee accepted excessive contributions in violation of 2 U.S.C. § 441a(f) when Mr. Rizzo, acting as the Committee's chief fundraiser, solicited loans totaling $794,000 from eight individuals to the Committee that exceeded the individual contribution limitations. In addition, Mr. Rizzo accepted and deposited into a Committee account at the Andover Bank (the "Andover account") excessive contributions from 42 contributors totaling $29,314. Moreover, the Committee accepted excessive contributions from Mr. Rizzo totaling at least $122,100. Mr. Rizzo advanced money and used his credit card to pay for certain Committee expenditures that were not related to his personal travel and subsistence. Mr. Rizzo also repaid three of the individual lenders $65,000 of the loans they had made to the Committee. Since the loans were contributions to the Committee, Mr. Rizzo's payments constituted excessive contributions to the Committee.

In addition, the Committee accepted prohibited contributions in violation of 2 U.S.C. § 441b(a). The Committee's chief fundraiser accepted and deposited corporate contributions totaling $3,571 into the Andover account.

The Andover account was a Committee account. Mr. Rizzo, an agent of the Committee, opened the Andover account in March 1991. Moreover, other Committee officials were aware of the Andover account by late January 1992, at the latest. Contributions to the Committee were deposited into the Andover account and campaign expenditures were made from the account. Yet, the Committee failed to designate the Andover account as a campaign depository in violation of 2 U.S.C. § 432(h)(1). As a result of the Committee's failure to properly report transactions related to the Andover account, it understated its 1991 receipts by $705,779 and its

9704379027 9

disbursements by $860,917, and overstated its ending cash by $155,138 in violation of 2 U.S.C. § 434(b).

In MUR 4176, the Committee accepted $34,849 in excessive unresolved contributions from individuals and a law firm partnership in violation of 2 U.S.C. § 441a(f). In addition, the Committee accepted excessive in-kind contributions totaling $60,844 in the form of staff advances that were not exempt personal travel and subsistence expenses reimbursed in a timely manner. 2 U.S.C. § 441a(f); 11 C.F.R. § 116.5(b). Moreover, the Committee overcharged the press $15,162 for travel expenses by including a 20% administrative cost markup to the actual cost of press travel instead of the permissible 10% administrative markup. Thus, the Committee violated 11 C.F.R. § 9034.6 by accepting excessive reimbursements from the press.

B. PROPOSED ACTION

This Office recommends that the Commission take no further action against the Committee in MUR 3585 and MUR 4176. This Office maintains that our legal analysis as expressed in the General Counsel's Briefs is correct.[3]

Nevertheless, several factors support the conclusion that the Commission should exercise its prosecutorial discretion and take no further action against the Committee in these matters.

[3] The factual summary and legal analyses set forth in the General Counsel's Briefs in these matters are incorporated by reference.

9704379028C

First, the candidate, Senator Tsongas, recently died.[4] The Commission is not barred from pursuing the committee of a deceased candidate since a candidate is legally distinct from his or her authorized committee. *See* 2 U.S.C. §§ 431(2),(4), (5), and (6); 26 U.S.C. § 9032; and 11 C.F.R. §§ 100.3, 100.5, 9032.1, 9032.2 (definitions). Pragmatically, however, the death of Senator Tsongas is a compelling reason for the Commission to take no further action against the Committee. The Committee will not be involved in the political process in the future and has little cash on hand or resources.[5] The Committee's most recent report, filed on January 23, 1997, which includes activity through December 31, 1996, reveals that the Committee has approximately $10,000 in cash on hand and debts totaling approximately $300,000 for legal and accounting services, loans from the candidate, telephone, polling, travel, storage, and other operating expenses.[6] The candidate's death will make it virtually impossible for the Committee to raise any additional funds to pay a civil penalty or disgorgement.

Moreover, in light of the decisions in *FEC v. Williams*, No. 95-55320 (9th Cir. filed Dec. 26, 1996) and *FEC v. National Republican Senatorial Committee*, 877 F. Supp. 15 (D.D.C. 1995), concerning the application of a five-year statute of limitations to enforcement actions, this

---

[4] In MUR 3585, the Commission found reason to believe on January 21, 1994 that Senator Tsongas violated 2 U.S.C. § 441a(f), but took no further action against him on November 29, 1994.

[5]

[6] Included in the total amount of debts are payments of $64,163 to the United States Treasury, $4,471 to the United States Secret Service and $15,262 to "Various Press Organizations," which the Committee has noted as disputed debts. These debts arose from the Commission's audit of the Committee and relate to disgorgement of excessive contributions and overbilling of the press and Secret Service. The disgorgement payment and the payments to the press are related to the issues in MUR 4176. In addition, the Committee lists a debt to the United States Treasury of $10,567 for repayment of non-qualified campaign expenses. However, the Committee made this repayment in June 1995 with a check drawn on an account of the law firm that represents the Committee. It is unclear why this amount has been reported as an outstanding debt.

9704379028 1

Office notes that the majority of the activity that is the basis of MURs 3585 and 4176 occurred more than five years ago.[7] *See* 28 U.S.C. § 2462. The Commission could pursue the few remaining violations as well as the disgorgement amounts, which are equitable remedies rather than civil penalties. In addition, the Commission could contend that Mr. Rizzo's fraudulent concealment of his activities and the Committee's failure to disclose the Andover account activity on its reports would toll the statute of limitations in MUR 3585 until the Commission was first notified of the existence of the Andover account in June 1992.

Under the circumstances, probable cause findings are not necessary. Further pursuit of these matters would not be an efficient use of the Commission's limited resources. The death of Senator Tsongas and the statute of limitations concerns provide persuasive reasons for the Commission to exercise its prosecutorial discretion, take no further action against the Committee in MUR 3585 and MUR 4176, and close the files in these matters.

9704379022832

---

[7] Specifically, the activity in MUR 3585 began in March 1991 when the Andover account was opened and the first loan was solicited from Lawrence Arnin. The last of the loans was made in February 1992, and the last activity in the Andover account was in late January 1992. Mr. Rizzo made staff advances between May 1991 and at least February 1992, and claims that he made advances on his credit card until September 1992. The financial misstatements and failure to designate the Andover account as a Committee account are continuing violations that began in April 1991. The Committee never amended its reports to correct these problems.

In MUR 4176, the press billings issue involves travel in February and March 1992 that was billed through July 1992. Most of the staff advances were incurred between May 1991 and April 1992, but one large advance for approximately $32,000 was incurred in July 1992. The partnership contributions were made between April and November 1991. Finally, the other excessive contributions were determined by sampling of contributions received throughout the campaign between March 1991 and July 1992.

III. NICHOLAS RIZZO (MUR 3585)

A. BACKGROUND

On January 24, 1994, the Commission reverted to find reason to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(1)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and 116.5(b).[8]

Concurrent with the Commission's investigation, the United States Department of Justice investigated and prosecuted Mr. Rizzo for numerous related criminal violations.[9] Mr. Rizzo agreed to a plea bargain and pled guilty on October 13, 1993 to criminal counts including mail fraud, money laundering, FECA violations, criminal forfeiture, and making false statements to the Commission. Specifically, the counts included violating the contribution limitations of 2 U.S.C. § 441a(a)(1)(A), causing the Committee to file false reports with the Commission, and making false statements in response to a Commission subpoena. Mr. Rizzo was sentenced to 52 months in prison, three years of supervised release, an $825 special assessment, forfeiture of $600,000 and restitution to the Committee and seven lenders totaling $899,000. However, the period of restitution was limited to five years after October 13, 1993, and the government agreed not to seek forfeiture of Mr. Rizzo's home during his spouse's lifetime. The plea bargain agreement provides that it "does not compromise any civil liability defendant may have incurred or may incur as a result of his plea of guilty." Attachment 4 at 2. It appears that Mr. Rizzo has

---

8 The Commission originally found reason to believe against Mr. Rizzo on April 12, 1995 and reverted its previous findings in this case following the decision in *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S.Ct. 537 (1994).

9 At the request of the United States Department of Justice, the Commission held this matter in abeyance pending the resolution of the criminal case against Mr. Rizzo.

9704379028 3

no funds or assets and it is unlikely he will ever be able to pay the forfeiture or restitution amounts. Mr. Rizzo will be released from prison in approximately May 1997.

This Office deposed Mr. Rizzo on March 9 and 10, 1994. Prior to the deposition, Mr. Rizzo and this Office, with the review and approval of the Department of Justice and the United States Attorney's Office in Boston, Massachusetts, agreed that his answers related to any matters arising from the indictment would not be used against him in any subsequent criminal prosecution by the United States government, with the exception of tax matters or any false statements made during the deposition. Attachment 5.

On August 14, 1996, this Office mailed Mr. Rizzo a letter and brief notifying him that this Office was prepared to recommend that the Commission find probable cause to believe that he knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(7)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and 116.5(b). Mr. Rizzo responded on September 12, 1996, asking several questions and requesting an extension of time to respond until his release from prison. Attachment 6. This Office informed him that such a long extension would not be possible, but did grant an extension of time for him to respond until November 25, 1996. Moreover, this Office responded to the questions Mr. Rizzo raised about Commission procedures and the findings against him in this matter. Mr. Rizzo sent additional letters on November 6, and 15, 1996, and indicated that he would not file any additional response. Attachments 7 and 8. Therefore, this Office considers his letters to constitute his response.

After reviewing Mr. Rizzo's response, this Office recommends that the Commission find probable cause to believe that Mr. Rizzo knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(7)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and

9704399024

116.5(b). However, this Office recommends that the Commission take no further action against Mr. Rizzo and close the file in MUR 3585.

B. SUMMARY OF RIZZO'S RESPONSE

Mr. Rizzo admits that he has "some if not all the guilt in the violations cited." Attachment 8. Nevertheless, he raises several arguments why the Commission should take no further action against him. Mr. Rizzo claims that he was "granted a letter of immunity from any further charges by the FEC." Attachment 6 at 1. Moreover, he contends that because he pled guilty to criminal violations of federal election law, the Commission's pursuit of him constitutes double jeopardy and a "rage to punish." Attachment 6 at 1; Attachment 7.

While Mr. Rizzo admits that his own credibility is open to question, he questions the accuracy and credibility of the Committee's witnesses. Finally, Mr. Rizzo claims that any fine would be "meaningless" in his case because he is indigent and that "[t]o simply impose a fine for the sake of the imposition is rather a pyrrhic victory." Attachment 8. He states that the judge at his plea hearing recognized that Mr. Rizzo is indigent and would be unable to make the court-ordered restitution. *Id.*

C. ANALYSIS

The evidence in this matter reveals a pervasive pattern of serious knowing and willful violations by Mr. Rizzo including solicitation of substantial excessive contributions donated to a publicly-financed presidential campaign. This Office concludes that there is probable cause to believe that Mr. Rizzo knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(1)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and 116.5(b). Mr. Rizzo's arguments primarily concern whether the Commission's pursuit of this enforcement matter against him is appropriate. None of the arguments raised by Mr. Rizzo challenge the

9704379028 5

essential facts or this Office's legal analysis of the violations in this matter.[10] Indeed, Mr. Rizzo generally admits his culpability for the violations.

The facts establishing Mr. Rizzo's violations and the consistent pattern of his knowing and willful conduct are clear from the testimony of numerous witnesses and the voluminous documentary evidence in this case.[11] Mr. Rizzo's deposition testimony alone establishes a sufficient factual basis for most of his violations. Mr. Rizzo worked as the Committee's chief fundraiser between March 1991 and the spring of 1992. He had previously worked as a fundraiser for numerous federal campaigns and was well aware of the limitations, prohibitions and reporting requirements of the Act.

Mr. Rizzo knowingly and willfully violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by soliciting and accepting contributions in the form of loans from eight individuals which exceeded the individual contribution limitation by a total of $791,750.[12] The lenders intended to benefit the Committee, not Mr. Rizzo, with their contributions. Although Mr. Rizzo was an experienced fundraiser who certainly knew that loans are contributions and that the contribution limitation for individuals is $1,000, 2 U.S.C. § 441a(a)(1)(A), he solicited and accepted

9704379029 6

---

10 We incorporate by reference the General Counsel's Brief dated August 16, 1996, which sets out the facts in this matter and this Office's legal analysis.

11 The knowing and willful nature of Mr. Rizzo's violations is supported by his guilty plea on criminal charges arising from the same activity. While the testimony of some witnesses in this case differed as to minor details, the witnesses' stories are remarkably consistent. The factual discrepancies Mr. Rizzo notes between his testimony and that of other witnesses are more relevant to details and the culpability of other respondents than they are to Mr. Rizzo's violations.

12 Between March 1991 and February 1992, Mr. Rizzo solicited loans to the Committee totaling $794,000 from these eight individuals, including $514,000 in checks made payable to the Committee and deposited into the Andover account and $280,000 in checks intended by the lenders to benefit the Committee, but made payable to Mr. Rizzo or his company, Benco, Inc.

contributions as large as $250,000, 250 times the individual contribution limitation. Mr. Rizzo also accepted and deposited into the Andover account excessive contribution checks from 42 individuals totaling $29,314. In addition, Mr. Rizzo knowingly and willfully violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(c) by accepting $3,571 in prohibited corporate contributions.

Moreover, Mr. Rizzo failed to forward to the Committee treasurer $280,000 in contributions from several lenders made payable to him or his company. Instead, he deposited these contributions into his personal and company bank accounts. Further, Mr. Rizzo knowingly and willfully failed to forward contributor information and other recordkeeping information on any of the contributions deposited into the Andover account or his personal and company accounts to the Committee treasurer in violation of 2 U.S.C. § 432(b)(1).

Although Mr. Rizzo opened the Andover account in the Committee's name, he never took any steps to have it designated as a Committee account. He knowingly and willfully made disbursements from this undesignated Committee account in violation of 2 U.S.C. § 432(h). Further, Mr. Rizzo knowingly and willfully commingled Committee funds with his personal funds in violation of 2 U.S.C. § 432(b)(3). He used Committee funds to repay loans and gambling debts and to pay for personal expenditures. Since Mr. Rizzo was not authorized to make disbursements from Committee funds for his personal expenses, he knowingly and willfully disbursed Committee funds without the treasurer's authorization in violation of 2 U.S.C. § 432(a).

In addition, Mr. Rizzo knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 116.5(b) by making contributions to the Committee in the form of advances for campaign expenditures and loan repayments that exceeded the individual contribution limitation by at least $122,100 and by making personal loan guarantees in the amount of $794,000. *See*

9704379028 7

11 C.F.R. § 100.7(a)(1)(i). Mr. Rizzo used his personal funds and his credit card to make or guarantee payment of campaign expenses, and repaid $65,000 of the loans to three of the lenders. Mr. Rizzo also made excessive contributions when he personally guaranteed the loans he solicited from the eight lenders.

Moreover, Mr. Rizzo's claim that he was granted a letter of immunity from the Commission is simply incorrect. On March 10, 1994, in connection with a deposition of Mr. Rizzo, this Office and Mr. Rizzo agreed that his answers related to any matters arising from the indictment would not be used against him in any subsequent criminal prosecution by the United States government, with the exception of tax matters or any false statements made during the deposition. Attachment 5. Since Mr. Rizzo's deposition was part of the Commission's investigation of the instant matter, the agreement does not bar the Commission from pursuing this matter. Moreover, this matter is a civil proceeding, not a criminal one. The agreement, which was reviewed and approved by the Department of Justice and the United States Attorney's Office in Boston, Massachusetts, only applies to future prosecution of criminal violations.

Mr. Rizzo contends that the Commission's pursuit of him constitutes double jeopardy because he pled guilty and was sentenced for criminal violations of federal election law. Under certain rare circumstances, a civil penalty may constitute punishment for the purpose of the double jeopardy clause. U.S. CONST. amend. V; *see, e.g., United States v. Halper*, 490 U.S. 435 (1989) (Disproportionately high civil sanction under False Claims Act against individual for filing of inflated Medicare claims constituted double jeopardy where individual had already been prosecuted and punished for criminal violations);[13] *but see, e.g., U.S. v. Ursery*, 116 S.Ct. 2135

[13] The Supreme Court held in *Halper* that "[u]nder the Double Jeopardy Clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the

97043790288

(1996) (*In rem* civil forfeitures related to drug violations are neither punishment nor criminal for purposes of the double jeopardy clause).[14]

In the event the Commission's case against him proceeded to litigation, a number of factors would undermine Mr. Rizzo's double jeopardy argument. The criminal charges to which Mr. Rizzo pled guilty included several election law violations, but did not include most of the numerous violations of the FECA and Commission regulations at issue in this matter. Moreover, Mr. Rizzo's plea bargain agreement explicitly provides that it "does not compromise any civil liability defendant may have incurred or may incur as a result of his plea of guilty." Attachment 4 at 2. This provision allows the Commission to pursue a civil enforcement matter against Mr. Rizzo. Finally, given Mr. Rizzo's financial situation, it is unlikely that the Commission would seek a substantial civil penalty from him.

Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. §§ 432(a), 432(b)(1) and (3), 432(h), 441a(a)(1)(A), 441a(f), 441b, and 11 C.F.R. §§ 110.9(a), 114.2(c), and 116.5(b). Nevertheless, this Office recommends that the Commission take no further action in this matter and close the file. It appears that Mr. Rizzo has no funds or assets and it is unlikely

9704379023 9

---

second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution." 490 U.S. at 449. However, the Supreme Court made clear that the case involved a rare situation where the civil fine was overwhelmingly disproportionate to the amount involved in the violation. *Id.; see Ursery*, 116 S.Ct. at 2145 (The *Halper* decision sets forth a "case-by-case balancing test . . . in which a court must compare the harm suffered by the Government against the size of the penalty imposed."). Thus, *Halper* should be narrowly construed.

14 *See also U.S. v. Alt*, 83 F.3d 779 (6th Cir. 1996) (Assessment of civil penalties on taxpayer did not constitute punishment for purposes of double jeopardy clause); *SEC v. Bilzerian*, 29 F.3d (D.C. Cir. 1994) (Civil disgorgement of profits from illegal conduct did not constitute punishment within the meaning of double jeopardy); *McNichols v. Commissioner of Internal Revenue*, 13 F.3d 432 (1st Cir. 1993) (Assessment of income tax deficiencies and penalties on proceeds of drug trafficking already forfeited to the government did not constitute double jeopardy or an excessive fine); *U.S. v. Bizzell*, 921 F.2d 263 (10th Cir. 1990) (Civil penalty and 18-month suspension from dealing in HUD activities did not constitute punishment within the meaning of the double jeopardy clause).

he will ever be able to pay the forfeiture or restitution amounts that were included in his criminal sentence. Mr. Rizzo may be released from prison later this year, but his background will make it difficult for him to earn a significant amount of money. Thus, it is unlikely that the Commission could get any civil penalty amount from Mr. Rizzo. Moreover, as previously discussed, most of the violations by Mr. Rizzo occurred more than five years ago, and thus would be barred by the statute of limitations, unless the statute of limitations was tolled by his fraudulent concealment of his activities. *See* 28 U.S.C. § 2462. In light of these factors, no further action is appropriate.

IV. RECOMMENDATIONS

1. Take no further action against the Tsongas Committee, Inc. and S. George Kokinos, as treasurer, in MUR 3585;

2. Take no further action against the Tsongas Committee, Inc. and S. George Kokinos, as treasurer, in MUR 4176;

3. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 432(a);

4. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 432(b)(1)

5. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 432(b)(3);

6. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 432(h);

7. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A);

8. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 441a(f);

9. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 2 U.S.C. § 441b;

10. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 11 C.F.R. § 110.9(a);

9704379022C

11. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 11 C.F.R. § 114.2(c);

12. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 11 C.F.R. §116.5(b).

13. Take no further action against Nicholas A. Rizzo Jr.;

14. Close the file in MUR 3585;

15. Close the file in MUR 4176; and

16. Approve the appropriate letters.

2/25/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Tsongas Committee, Inc. Brief - MUR 3585
2. Tsongas Committee, Inc. Brief - MUR 4176
3. Letter from Lyn Utrecht dated January 30, 1997
4. Plea Bargain agreement and hearing transcript
5. Cooperation Agreement
6. Letter from Nicholas Rizzo dated September 12, 1996
7 Letter from Nicholas Rizzo dated November 6, 1997
8. Letter from Nicholas Rizzo dated November 15, 1996

Staff assigned: Delanie DeWitt Painter

97043790221

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Nicholas A. Rizzo, Jr.;	)	MURs 3585 & 4176
The Tsongas Committee, Inc. and	)	
George Kokinos, as Treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 3, 1997, the Commission decided by a vote of 5-0 to take the following actions in MURs 3585 & 4176:

1. Take no further action against the Tsongas Committee, Inc. and S. George Kokinos, as treasurer, in MUR 3585.

2. Take no further action against the Tsongas Committee, Inc. and S. George Kokinos, as treasurer, in MUR 4176.

3. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 432(a).

4. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 432(b)(1).

5. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 432(b)(3).

(continued)

9704379022

6. Find probable cause to that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 432(h).

7. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A).

8. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 441a(f).

9. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 2 U.S.C. § 441b.

10. Find probable cause to believe that Nicholas A. Rizzo, Jr. knowingly and willfully violated 11 C.F.R. § 110.9(a).

11. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 11 C.F.R. § 114.2(c).

12. Find probable cause to believe that Nicholas A. Rizzo, Jr., knowingly and willfully violated 11 C.F.R. § 116.5(b).

13. Take no further action against Nicholas A. Rizzo, Jr.

(continued)

9704379023

14. Close the file in MUR 3585.

15. Close the file in MUR 4176.

16. Approve the appropriate letters, as recommended in the General Counsel's Report dated February 25, 1997.

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

Attest:

3/4/97
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., Feb. 26, 1997 11:35 a.m.
Circulated to the Commission: Wed., Feb. 26, 1997 4:00 p.m.
Deadline for vote: Mon., Mar. 03, 1997 4:00 p.m.

bjr

97043790294

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20006

RE: MUR 4176
The Tsongas Committee, Inc.
and S. George Kokinos, as treasurer

Dear Ms. Utrecht:

On December 14, 1995 the Federal Election Commission found reason to believe that your clients, The Tsongas Committee, Inc. and S. George Kokinos, as treasurer ("the Committee") violated 2 U.S.C. § 441a(f); and 11 C.F.R. § 9034.6. After considering the circumstances of the matter, the Commission determined on March 3, 1997, to take no further action against the Committee, and closed the 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.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

97043790225

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

David Goldman
75 Glen Road
Jamaica Plain, MA 02130

RE: MUR 4176

Dear Mr. Goldman:

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

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter
Attorney

9704379020006

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Andy Paven
20 Moon Street
Boston, MA 02114

RE: MUR 4176

Dear Mr. Paven:

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

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter
Attorney

9704379027

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dennis Newman
580 Pearl Street
Reading, MA 01867

RE: MUR 4176

Dear Mr. Newman:

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

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie D. Painter

Delanie DeWitt Painter
Attorney

9704379020 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Gregory T. Moffatt, Esq.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109-2170

RE: MUR 4176

Dear Mr. Moffatt:

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

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter

Delanie DeWitt Painter
Attorney

9704379029

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 20, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Diana L. Armenakis, Esq.
Armenakis & Armenakis
121 Greene Street
Third Floor
New York, NY 10012

RE: MUR 4176

Dear Ms. Armenakis:

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

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Delanie DeWitt Painter
Attorney

9704379030CC

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4176

DATE FILMED 4-16-92 CAMERA NO. 1

CAMERAMAN Jon H

9704379030C1