FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4266

DATE FILMED 4-1-97 CAMERA NO. 4

CAMERAMAN JMN

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK006901

September 28, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FRIENDS OF MARC LITTLE - MATTERS REFERABLE TO THE OFFICE OF GENERAL COUNSEL

On September 21, 1995, the Commission approved the Final Audit Report on Friends of Marc Little. Since the Committee did not comply with the recommendations in the interim audit report, all three findings are being referred to your office:

II.A. Failure to Maintain Disbursement Records

II.B. Prohibited Contributions

II.C. Excessive Contributions

Should you have any questions regarding these matters, please contact Russ Bruner or Joe Stoltz at 219-3720. Workpapers are available for your review if necessary.

Attachments:

Final Audit report on Friends of Marc Little

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF MARC LITTLE

I. Background

A. Overview

This report is based on an audit of Friends of Marc Little (the "Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The audit covered the period from September 13, 1993, the inception of the Committee, through December 31, 1994. The Committee reported a beginning cash balance of $0; total receipts for the period of $214,221; total disbursements for the period of $212,238; and an ending cash balance of $1,983.1/

B. Campaign Organization

The Committee registered with the Clerk of the U.S. House of Representatives on December 8, 1993 as the principal campaign committee for Marc Little, Republican candidate for the U.S. House of Representatives, District 3, from the state of Florida. The Committee maintained its headquarters in Jacksonville, Florida.

1/ All figures in this report have been rounded to the nearest dollar.

The audit indicated that the 90% of the Committee's receipts were contributions from individuals, 6% from Political Action Committees and the rest from offsets to operating expenditures, a loan from the candidate and contributions from political party committees.

This report is based on documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review.

C. Key Personnel

The Treasurers of the Committee during the period covered by the audit were Mr. Clive Stephenson from inception to October 11, 1994 and Ms. Eleanor M. Christen from October 11, 1994 to January 17, 1995.2/

D. Scope

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Findings II.C.);

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.B.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;

2/ Mr. Stephenson resigned from the Committee on September 20, 1994 but the Amended Statement of Organization was not received at the Commission until October 11, 1994.

6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;

7. adequate recordkeeping for campaign transactions (see Finding II.A);

8. other audit procedures that were deemed necessary in the situation.

An Interim Audit Report was sent to the Committee on June 30, 1995. The candidate responded on August 2, 1995. He stated that during the campaign he did not approve any bank deposits or sign any campaign checks. According to the candidate, he cannot afford the time or money to go back to vendors to get missing invoices, obtain cancelled checks, obtain information for in-kind contributions, provide evidence that contributions were not from corporations, refund money to contributors, and find contributors to explain excessive contributions. He hired a campaign manager, who appointed treasurers, who were accountable for the activities. They were responsible for maintaining this information. He concludes that he is not responsible for the issues detailed in the Interim Audit Report. As a result, the Committee did not comply with any of the recommendations.

As part of the Interim Audit Report, the Audit staff stated they were not able to complete reviews due to the lack of disbursement records (see Finding II.A below). Unless specifically discussed below, no material non-compliance was detected. Also, it was noted that the Commission may pursue any of the matters discussed in the report in an enforcement action.

II. Findings and Recommendation

A. Failure to Maintain Disbursement Records

Sections 432(c)(1), (2), (5), and (d) of Title 2 of the United States Code state, 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 and 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 name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, including a receipt, invoice, or cancelled check for each disbursement in excess of $200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Sections 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A) of Title 11 of the Code of Federal Regulations state, in part, that the terms contributions and expenditures include anything of value, which includes in kind contributions.

The Committee did not maintain cancelled checks for $97,377 of their disbursements, however, it did maintain receipts and invoices to support many of the disbursements. These records were not maintained in any particular order. The Committee records also contained all of the bank statements and check registers for part of the period. Using these records and the Committee's disclosure reports which itemized nearly all disbursements, the Audit staff attempted to associate the expenditures itemized on the report with the receipts and invoices provided by the Committee. Of the disbursements that exceeded $200, the Committee did not provide a cancelled check, invoice, or receipted bill to support $34,898.

The Committee also did not maintain a complete record of the expenditures made during the campaign. Using other available records, including printouts of Committee disbursements, hand written summaries of checks, and the above documentation, the Audit staff was able to find some record, beyond an entry on a bank statement, for all but $17,447 in Committee disbursements. All of these disbursements were itemized on the Committee's disclosure reports. Also, $13,627 of the $17,447 is included in the $34,898 noted above.

In addition, during the audit period, the Committee reported receiving in-kind contributions from individuals totaling $24,170. The Audit staff could not locate support for $12,237 of the reported in-kind contributions in the Committee records.

The Committee was provided lists of the disbursements discussed above at the exit conference. As of the date of the Interim Audit Report, the Committee had not submitted any additional records.

In the Interim Audit Report recommendation the Committee was to either; (1) contact the vendors and attempt to get missing invoices, or some other statement from the vendor to support the disbursements and submit copies of the letters sent and responses received; and/or (2) obtain and submit copies of both sides of the cancelled checks from its bank supporting the $34,898 in disbursements. The Committee was to also submit additional information concerning the $17,447 and the $12,237 in in-kind contributions for which no records were presented.

B. Prohibited Contributions

Section 441b of Title 2 of the United States Code states, in part, that it is unlawful any national bank, corporation, or labor organization to make a contribution or expenditure in connection with any election at which a Representative in Congress is to be voted for or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3), 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.

The Audit staff conducted a 100% review of contributor check copies for possible prohibited contributions. Upon verification with various Secretaries of State, it was determined that the Committee had received 31 contributions totaling $4,803 from 28 entities that are apparently incorporated. There was no record that the Committee had made any attempt to determine whether these contributions were from prohibited sources. The Committee did not maintain a separate account or maintain sufficient funds to refund these contributions, as required by 11 CFR §103.3(b)(4).

At the completion of fieldwork the Committee was supplied with the list of verified corporate contributions.

In the Interim Audit Report recommendation the Committee was to provide evidence that demonstrated these contributions were not from corporations. Absent such a demonstration, the Committee was to refund the contributions and provide evidence of the refunds (photocopies of the front and back of the canceled check). If money was not available, the Committee was to report debts owed to the contributors, and refund these contributions from the next available funds that it received.

C. Excessive Contributions

Section 441a(a)(1)(A) of Title 2 of the United States Code states 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 441f of Title 2 of the United States Code states, that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

Section 110.4(b)(iv)(2)(ii) of Title 11 of the Code of Federal Regulations states, in part, that an example of a contribution in the name of another includes, making a contribution and attributing the source as another person when in fact the contributor is the source.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3), 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.

During the Audit staff review of the Committee's contributor records and contributor check copies, we noted a contributor, L. John Arbizzani, who contributed $1,000 for the primary election and $1,000 for the general election. In addition, Mr. Arbizzani made an additional $3,000 in contributions on October 14, 1994. On the memo lines of each check were the names of three individuals. The Committee included the names of these other individuals in the records and on its disclosure reports as the source of these contributions. The Committee was provided this information at the exit conference.

There was no record that the Committee had made any attempt to determine whether these contributions were from the three individuals on the memo lines of the checks. The Committee did not maintain a separate account or maintain sufficient funds to refund these contributions, as required by 11 CFR §103.3(b)(4).

In the Interim Audit Report recommendation the Committee was to provide evidence that demonstrated these were not excessive contributions and represented the personal funds of the contributors recorded by the Committee, to include a statement from the contributors. Absent such a demonstration, the Committee was to refund the contributions and provide evidence of the refund (photocopies of the front and back of the canceled check). If money was not available, the Committee was to report debts owed to the contributors, and refund these contributions from the next available funds that it received.

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 21 4 21 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Enforcement Priority System II)
)

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On September 10, 1996, the Commission approved an Enforcement Priority System for enforcement matters assigned to OGC Public Financing, Ethics & Special Projects staff ("EPS II"). *See* Memorandum to the Commission, *PFESP Enforcement Priority System,* dated August 6, 1996.

[1]

This Office has rated all of its PFESP enforcement cases under EPS II. Based upon that evaluation, this Office has identified 12 MURs for closing. By closing these 12 cases, this Office will be better able to focus its resources on the more significant cases, generally presidential matters. Moreover, these closings will enable us to process the 1996 presidential audits in a more efficient manner.

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[1] This Office is currently assessing the impact of *FEC v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996), on our caseload. In *Williams*, the court ruled that the five-year statute of limitations under 28 U.S.C. § 2462 applies to the imposition of civil penalties in Commission enforcement actions. Unlike the initial implementation of the Enforcement Priority System ("EPS"), this Office is not recommending that certain cases involving stale activity be closed at this time. *See, e.g.*, Implementation of the Enforcement Priority System, approved April 20, 1993. This Office will forward specific recommendations in light of *Williams* in a subsequent report to the Commission.

Attached for Commission approval is the form letter that would be sent should these recommendations be approved. With the exception of notification letters sent to respondents in audit referrals, this Office will use the form notification letters currently used by the Enforcement Division. Since there is no form notification letter for audit referrals, this Office drafted the form notification letter at Attachment 1. Unlike RAD referrals, audit referrals are immediately assigned a MUR number and will eventually go on the public record when closed. Thus, it is necessary for us to notify the respondents in these instances prior to the matter appearing on the public record.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

Having evaluated the PFESP enforcement caseload, this Office has identified 12 cases that do not warrant pursuit relative to other pending matters.[2] A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this Report. *See* Attachment 2. Also attached are the referral materials where that information has not been circulated previously to the Commission. *See* Attachment 3.

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[2] These matters are: (1) MUR 4251 (Republican State Committee of Delaware); (2) MUR 4266 (Friends of Marc Little); (3) MUR 4271 (People for English); (4) MUR 4300 (The Committee to Elect Michael Flanagan); (5) MUR 4337 (Montana State Democratic Central Committee); (6) MUR 4345 (Nevada State Democratic Party); (7) MUR 4346 (Citizens for Jack Metcalf); (8) MUR 4381 (United Republican Fund of Illinois, Inc.); (9) MUR 4400 (San Bernardino County Republican Central Committee); (10) MUR 4436 (Abraham for Senate); (11) MUR 4441 (Republican Party of Dade County); and (12) MUR 4618 (Mississippi Democratic Party Political Action Committee).

RECOMMENDATIONS

1. Approve the notification form letter at Attachment 1.

2. Take no further action, close the file effective (date) and approve the appropriate letters in the following matters:

   a. MUR 4251
   b. MUR 4266
   c. MUR 4271
   d. MUR 4300
   e. MUR 4337
   f. MUR 4345
   g. MUR 4346
   h. MUR 4381
   i. MUR 4400
   j. MUR 4436
   k. MUR 4441
   l. MUR 4618

2/21/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Form letter
2. Description of low rated cases
3. Referral materials not previously circulated

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enforcement Priority System II.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1997, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Approve the notification form letter, as recommended in the General Counsel's Report dated February 21, 1997.

2. Take no further action, close the file effective March 5, 1997 and approve the appropriate letters in the following matters:

a.	MUR 4251		g.	MUR 4346
b.	MUR 4266		h.	MUR 4381
c.	MUR 4271		i.	MUR 4400
d.	MUR 4300		j.	MUR 4436
e.	MUR 4337		k.	MUR 4441
f.	MUR 4345		l.	MUR 4618

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

Attest:

2-27-97
Date

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

Received in the Secretariat: Fri., Feb. 21, 1997 4:21 p.m.
Circulated to the Commission: Mon., Feb. 24, 1997 11:00 a.m.
Deadline for vote: Thurs., Feb. 27, 1997 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 19, 1997

Marc C. Little
c/o Friends of Marc Little
218 Broad Street
Jacksonville, FL 32209

RE: MUR 4266

Dear Mr. Little:

On September 28, 1995, the Audit Division referred the enclosed matters to the Office of General Counsel involving Friends of Marc Little ("Committee") for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b). After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Committee. Accordingly, the Commission closed its file in this matter on March 5, 1997.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact me at (800)424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker
Special Assistant General Counsel

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4266

DATE FILMED 4-1-97 CAMERA NO. 4

CAMERAMAN JMH

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