FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4306

DATE FILMED 10-27-97 CAMERA NO. 2

CAMERAMAN JmU

AK007542
AR#95-11

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 9, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

MUR
4306

SUBJECT: JUDE FOR CONGRESS - REFERRAL MATTER

On January 25, 1996 the Commission approved the Final Audit Report (FAR) on Jude for Congress. The report was released to the public on February 5, 1996. As a result, the attached finding (Finding II.A. - Candidate Loan) from the final audit report is being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Sam Owusu or Tom Nurthen Halter at 219-3720.

Attachment:

Finding II.A. (Candidate Loan), FAR Pgs. 2-6.

II. Audit Findings and Recommendations

A. Candidate Loan

Section 431(8)(A)(i) of Title 2 of the United States Code states, that the term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 100.7(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that the term loan includes a guarantee, endorsement, and any other form of security.

Sections 110.10(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that candidates for Federal office may make unlimited expenditures from personal funds. For purposes of this section, personal funds means any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: legal and rightful title, or an equitable interest. A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in 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.

The Committee reported receiving a $50,000 loan from the Candidate, Thaddeus V. Jude, on October 31, 1994. The reported loan transaction was made via check drawn on a bank account that is jointly held by the Candidate and his spouse.2/ It should be noted that a deposit in the amount of $50,000 was made to the joint checking account held by the Candidate and his spouse on October 31, 1994.

During the course of the fieldwork, the Audit staff requested that the Committee identify the source of the October 31, 1994 deposit made to the joint checking account, and if made from an account controlled by the Candidate; copies of the account statements for the period October through November 1994.

At the exit conference, the Candidate's attorney stated that the source of the $50,000 deposit into the joint checking account was from a trust account. The Audit staff again requested that the Committee provide copies of the October and November 1994 bank statements for the trust account. The Audit staff also requested the Committee identify the type of trust, provide a copy of the trust agreement as well as any codicil(s)

2/ This check was returned by the bank on November 2, 1994 due to insufficient funds. The Committee re-deposited the check on November 15, 1994.

to the trust agreement. It should be noted that the Candidate issued checks, totaling $1,500, dated October 7, 1994, drawn on the Victor N. Jude Revocable Trust.

The Committee did not provide any of the documentation requested within the 10 day period provided subsequent to the exit conference.

Given the above, at the time of the interim audit report, it appeared that the source of the loan was the trust account. However, absent documentation with respect to the type of trust, the trust agreements, statements for the account, etc., a determination as to the actual source of funds and whether the loan was permissible was not certain.

In the interim audit report the Audit staff recommended that the Committee provide the October and November 1994 bank statements for the trust account,3/ identify the type of trust, provide a copy of the trust agreement and codicil(s) if any. The Committee was also requested to provide a statement that demonstrated that the funds from the trust account were permissible for use in federal elections.

In response to the interim audit report the Committee provided the following:

- copy of the Ruth M. Jude Revocable Trust Agreement [Candidate's mother];
- copy of the Victor N. Jude Revocable Trust Agreement [Candidate's father];
- copies of the October 7 through November 10, 1994 bank statement for each trust account;
- copies of the October 1994 and November 1994 bank statements for the Candidate and spouse joint checking account; and,
- copies of checks relevant to the above loan transaction.

According to the documents provided, on November 2, 1994 a $50,000 check, payable to Victor N. Jude Revocable Trust, was issued from the Ruth M. Jude Revocable Trust Account. The

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3/ If a deposit was made to the trust account to cover the check (from the trust account) deposited into the Candidate's personal account, bank statements associated with the check deposited into the trust account should be made available.

memo line is annotated "loan to Thaddeus Jude taken from Vic Jude Trust". The check was deposited into the Victor N. Jude Revocable Trust Account on November 2, 1994.

On October 31, 1994 a $50,000 check payable to Tad Jude (signed by Tad Jude) was issued from the Victor N. Jude Revocable Trust. The memo line was annotated "loan". The balance in the Victor N. Jude Revocable Trust Account on October 31, 1994, prior to this check being issued was approximately $2,444. This check was deposited into the Candidate's joint checking acccunt.

According to the Committee's attorney "the loan made by the candidate's mother to the candidate's deceased father's trust was to provide liquidity to the Victor N. Jude Trust. The candidate/beneficiary of the Victor N. Jude Trust then received a portion of his share in his father's trust. This was not a loan for the purpose of influencing the election but rather a loan to the candidate of a portion of his share of the Victor N. Jude Trust following his father's death. Victor Jude died in August, 1994."

Based on our review of the Victor N. Jude Revocable Trust Agreement, the Candidate did not have legal and rightful title or an equitable interest to any portion of Victor N. Jude trust assets on October 31, 1994.

With respect to distribution of the assets of this trust, it appears only Article III. (Dispositive Provisions), Paragraph 3.3 (Upon Death of the Settlor with a Surviving Spouse) and Paragraph 3.4 (Upon Death of the Settlor without a Surviving Spouse, or Disposition of Family Trust Upon Death of Settlor's Spouse) is relevant.

Victor N. Jude was survived by his spouse, Ruth M. Jude. Therefore, Paragraph 3.3 governs distribution of the trust assets. There is no stated directive that provides a distribution to the Candidate pursuant to Paragraph 3.3.

Paragraph 3.3 provides, in relevant part, that upon the death of the Settlor leaving a surviving spouse, the Trustee shall from the trust property: pay certain expenses unless these payments are otherwise provided for; distribute a gift provided for; transfer an amount to the Settlor's surviving spouse; if any balance is remaining, transfer an amount to the Family Trust; if a balance still remains transfer this amount to the surviving spouse. (According to the Ruth M. Jude Revocable Trust Agreement, upon the death of Ruth M. Jude, after payment of just debts, expenses and gifts, the balance of the trust property (including the Family Trust) would be distributed outright to the Settlor's children in equal shares, per stirpes.)

Rather Paragraph 3.4.3 states, absent a surviving spouse, the Candidate, as well as, eight other children would have received in equal shares, per stirpes, the balance of the trust property subsequent to distributions required at Paragraphs 3.4.1 and 3.4.2. [payment of just debts and gift provisions].

Based on documentation made available, the source of the $50,000 loan was the Ruth M. Jude Revocable Trust Account, not the personal funds of the Candidate as posited in the Committee's response. As a result, it appears Ruth M. Jude, the Candidate's mother, made a $50,000 excessive contribution to the Committee. Ruth N. Jude previously contributed $1,000 to each election.

Finally, as previously stated the Candidate issued checks, totaling $1,500, drawn on the Victor N. Jude Revocable Trust. Article III., Paragraph 3.3, does not provide for such a distribution.

FEDERAL ELECTION COMMISSION
OGC INDEX - (O) (97-98)

DATE 9/30/97
PAGE 1

JUDE, TAD

ID #H0MN06051

JUDE FOR CONGRESS
KEVIN DITTBENNER 5688 ARTHUR ST NE FRIDLEY HOUSE MN 55432

ID #C00270363

FILING FREQUENCY: QUARTERLY

FORM TYPE	RPT TYPE	AI	PGI	REC DATE	PGS	BEG MICRO	COVERAGE DATES		BEG CASH	RECEIPTS	DISBURSE	END CASH	DEBTS BY
3	MY	N	G	7/15/97	7	97032182927	1/01/97	6/30/97	3694	1910	5604	0	20034
								TOTAL		1910	5604		

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JUDE, TAD

ID #H0MN06051

JUDE FOR CONGRESS
KEVIN DITTBENNER 5688 ARTHUR ST NE FRIDLEY HOUSE MN 55432

ID #C00270363

FILING FREQUENCY: QUARTERLY

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								TOTAL		1910	5604		

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

SEP 17 4 03 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Enforcement Priority System II	)	MUR 4306
	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The cases listed below have been identified as low rated and stale matters under the Enforcement Priority System II ("EPS II") for cases assigned to the Public Financing, Ethics & Special Projects ("PFESP") staff. *See* Memorandum to the Commission, *PFESP Enforcement Priority System*, approved September 10, 1996. This Report recommends that the Commission no longer pursue the low rated and stale matters noted.

II. CASES RECOMMENDED FOR CLOSING

An important element of EPS II is identifying pending cases that no longer warrant additional resource expenditures. By focusing our investigative efforts on cases involving more recent activity, we can more efficiently allocate our limited resources where they can significantly affect the electoral process. Specifically, we can focus on audits of publicly financed 1996 presidential campaigns, and on enforcement matters raising more significant issues.

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

EPS II was created to identify pending cases which, based upon their lower priority, do not warrant further expenditure of resources. The PFESP Docket evaluates each incoming matter using Commission-approved criteria, which results in a numerical rating of each case.

B. Stale Cases

Investigations require greater resources of time and funds when the activity and factual evidence are not current. By focusing our investigative efforts on cases involving recent activity, we more efficiently allocate our limited resources where they can significantly affect the electoral process.

Accordingly, this Office has identified one stale PFESP enforcement matter that we believe does not warrant further investment of Commission resources.

Therefore, this Office recommends that the Commission exercise its prosecutorial discretion and close the file with respect to MUR 4306.

III. RECOMMENDATION

1. Take no action, close the file and approve the appropriate letters in the following matters:

MUR 4306

9/16/97
Date

Lois G. Lerner for Lawrence M. Noble
Lawrence M. Noble
General Counsel

Attachments
1. Description of low rated matter
2. Uncirculated referral materials

Hagan

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 September 23, 1997, the Commission decided by a vote of 5-0 to take no action, close the file and approve the appropriate letters in MUR 4306 as recommended in the General Counsel's Report dated September 16, 1997.

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

Attest:

9-23-97
Date

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

Received in the Secretariat: Wed., Sept. 17, 1997 4:03 p.m.
Circulated to the Commission: Thurs., Sept. 18, 1997 11:00 a.m.
Deadline for vote: Tues., Sept. 23, 1997 4:00 p.m.

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Hagan

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 1997

Kevin Dittbenner, Treasurer
Jude for Congress
5688 Arthur Street, N.E.
Fridley, MN 55432

RE: MUR 4306

Dear Mr. Dittbenner:

On February 12, 1996, the Audit Division referred certain matters to the Office of General Counsel concerning Jude for Congress ("the Committee") and Kevin Dittbenner, as treasurer, for possible enforcement action. *See* Referral Materials. The referral resulted 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 the Committee and Kevin Dittbenner, as treasurer. Accordingly, the Commission closed its file in this matter on September 23, 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

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RECEIVED
FEDERAL ELECTION
COMMISSION

Federal Election Commission
Attn: Gregory R. Baker
Special Assistant General Counsel
Washington, D.C. 20463

October 7, 1997

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Re: MUR 4306

CLOSED

Dear Mr. Baker,

I am writing in response to your recent letter regarding case MUR 4306. I would like to take this opportunity to thank you for your recent decision regarding this case.

In your letter you gave me the opportunity to submit any additional factual or legal materials to add to public record regarding this case. I would like to do so at this time.

Your letter indicates that Kevin Dittbenner (myself) is the treasurer of record for the Jude for Congress committee. While it is true that I was the treasurer for this committee for the 1996 Jude for Congress campaign, I was not the treasurer at the time the audit on this committee took place. The audit (case MUR 4306) occurred as a result of the 1994 Jude for Congress campaign. I had no connection with this committee until after that campaign. I would like the public record to reflect that this case was opened prior to my involvement with the Jude for Congress campaign.

I appreciate your efforts on this matter and thank you in advance for the necessary changes.

Sincerely,

Kevin Dittbenner
Treasurer - Jude for Congress
P.O. Box 381
Elbow Lake, MN 56531

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4306

DATE FILMED 10-27-97 CAMERA NO. 2

CAMERAMAN JmP

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