FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble

FROM: Mary W. Dove/Lisa R. Davis

DATE: June 16, 1999

SUBJECT: Statement of Reasons for MUR 4323.

Attached is a copy of the Statement of Reasons in MUR 4323 signed by Vice-Chairman Darryl R. Wold, Commissioner Lee Ann Elliott, and Commissioner David M. Mason. This was received in the Commission Secretary's Office on Wednesday, June 16, 1999 at 10:55 a.m.

cc: V. Convery

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Huckabee Election Committee (U.S. Senate)	)	MUR 4323
Prissy Hickerson, as treasurer	)	
Huckabee Election Committee	)	
Prissy Hickerson, as Treasurer	)	
The Honorable Mike Huckabee	)	

ADDITIONAL STATEMENT OF REASONS OF VICE CHAIRMAN WOLD AND COMMISSIONERS ELLIOTT AND MASON

On April 13, 1999, the Federal Election Commission ("the Commission") unanimously accepted the recommendation of its Office of General Counsel (OGC) to find probable cause to believe in Matter Under Review (MUR) 4323 that the Huckabee Election Committee (U.S. Senate, hereafter "Senate Committee") and Prissy Hickerson, as treasurer, the Huckabee Election Committee ("the State Committee") and Ms. Hickerson, also as its treasurer, and The Honorable Mike Huckabee violated 2 U.S.C. § 441b due to the State Committee apparently making prohibited in-kind contributions to the Senate Committee by paying for "testing the waters" expenses.[1] The Commission, however, rejected the OGC's recommendation to proceed further with respect to these violations, deciding instead to take no further action. The Commission determined that the amount of the in-kind contributions was so small as not warranting the further expenditure of agency resources. *See Statement of Reasons* in MURs 4317 and 4323 at 1-3 (relying on *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985)).

While we agree with this determination, we write this additional Statement to note and explain our disagreement with the OGC as to its conclusion that 50% ($1,400) of the cost of the State Committee's mailing was attributable to the Senate Committee on the ground that it was used to "test the waters" as to a possible Senate candidacy.

We view the mailing as a fundraising letter, and as such we believe there is no valid theory under which any portion of its cost could be attributed to a Senate candidacy. As a threshold matter, the solicitation was not for a possible Senate campaign; it was, as Mr. Huckabee asserted, clearly intended to raise funds for his state campaign committee.

[1] On this date, the Commission also voted on the OGC's recommendations in the companion MUR, number 4317. *See id.*

Nor was the mailing a joint solicitation with his federal campaign. The use of reply devices asking potential donors' views on a variety of issues is commonplace in fundraising mailings, and we reject the suggestion that solicitation expenses should be apportioned based on the contents of a direct mailing package. Under our regulations, solicitation expenses must be apportioned based upon the entity (or entities) receiving funds. *See* 11 C.F.R. § 106.1(a)(1), "Allocation of expenses between candidates" ("In the case of a fundraising program or event where funds collected by one committee for more than one candidate, the attribution shall be determined by the proportion of funds received by each candidate . . . ."). Because there is no suggestion that the Senate Committee received any of the funds the mailing generated or that they were used for any purpose other than to defray legitimate state campaign expenses, it is erroneous to attribute part of them to Mr. Huckabee's Senate candidacy. (It would also be erroneous for a federal campaign to apportion its solicitation costs as shared polling expenses under 11 C.F.R. § 106.4(e) simply because it included a questionnaire in a solicitation.)

Indeed, our regulations prohibit committees from "charging off" fundraising expenses to committees which do not receive any of the funds raised. Assume, for example, Mr. Huckabee's Senate Committee had mailed to Arkansans a fundraising letter for his federal candidacy with a questionnaire which contained one question asking whether he should run for Governor of Arkansas and a few other questions which had "state components." It is unlikely the Commission would conclude in that case that Mr. Huckabee's State Committee could pay for 50% of the cost of this mailing even though it did not receive any of the funds raised from this mailing.

Even if we overlook the obvious purpose of the fundraising mailing, it is doubtful that the mailing nevertheless had significant promotional value for Mr. Huckabee's potential Senate campaign. The appeal for funds was not sent to a large number of voters. All of the questions (other than the one about a Senate race, which might well have had the intent and effect of inducing donors to help retire Mr. Huckabee's state campaign debt) appear to relate to issues which had been before the Arkansas state legislature. Given the complexities of federal-state relations, the fact that there was some federal role in the issues and programs the state legislature considered is commonplace. If we assert federal jurisdiction over campaign communications for this reason, there would be virtually no public policy issue which state campaigns could discuss without triggering FECA registration requirements.

Darryl R. Wold — Date
Vice Chairman

Lee Ann Elliott — 6/16/99 — Date
Commissioner

David M. Mason — 6/16/99 — Date
Commissioner