FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 1997

Frederic D. Woocher, Esq.
Strumwasser & Woocher
100 Wilshire Boulevard,
Suite 1900
Santa Monica, CA 90401

RE: MUR 4389 and MUR 4652
Orange County Democratic Central Committee and Edward R. Haskett, as treasurer

Dear Mr. Woocher:

On June 20, 1996, the Federal Election Commission notified your clients, the Orange County Democratic Central Committee ("Committee") and Edward R. Haskett, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on June 10, 1997, found that there is reason to believe the Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), 441a(a)(1)(A), and 441d(a), provisions of 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 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

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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 matter 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 Eugene Bull, the attorney assigned to this matter, at (202) 219-3690.

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Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MURs: 4389 and 4652

RESPONDENT: Orange County Democratic Central Committee
and Edward R. Haskett, as treasurer

I. GENERATION OF MATTER

This matter was initiated by a sua sponte submission reeeived from the Orange County Democratic Party and Central Committee on May 20, 1996, and a complaint received from Michael J. Schroeder on June 17, 1996 against the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer (a.k.a. Orange County Democratic Party) (the "Democratic Committee" or the "Party"), James ("Jim") Toledano, James ("Jim") Prince, Debra Lee LaPrade, and Paul LaPrade.

According to the sua sponte submission received from the Democratic Committee, its Chairman, Jim Toledano, used $10,000 received from Paul LaPrade, to produce a mailer shortly before the March 26, 1996 primary election in California's 46th Congressional District. The mailer was distributed to voters of the district, allegedly under the auspices of the Democratic Committee, and stated that the Democratic Committee had endorsed Jim Prince and a candidate for state assembly. The mailer also urged citizens to vote on election day. However, the Democratic Committee asserts that neither its treasurer nor its executive committee had authorized any mailing or expenditures of funds for such purpose.

The Democratic Committee asserts that the $10,000 LaPrade contribution was in Mr. Toledano's possession as of March 6, 1996. Mr. Toledano deposited the contribution into a new

bank account he opened the next day in the name of the Democratic Committee and then used those funds to make payments in connection with the mailer. The Democratic Committee further asserts that Mr. Toledano contravened its by-laws because he did not inform or consult its executive committee before or after the bank account was opened and the mailer was distributed. Also, Mr. Toledano never requested authorization from the executive committee before receiving and expending funds on behalf of the Democratic Committee.

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The Democratic Committee's sua sponte submission also alleges that the Prince for Congress Committee and James M. Prince, as treasurer (the "Prince Committee"), incorrectly reported the LaPrade contribution on its 1996 April Quarterly Report as having been conveyed to the Prince Committee through the Democratic Committee.

The complaint filed by Mr. Schroeder parallels several of the allegations made by the sua sponte submission. Mr. Schroeder asserts that prior to their 12 Day Pre-Election Report due before the March 26, 1996 California Primary, Mr. Toledano, as Chairman, and/or the Democratic Committee received payments of $5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of the election of Jim Prince to California's 46th Congressional District. Complainant alleges that the Democratic Committee filed no pre-election report of any kind disclosing the receipt of said payments. He further alleges the monies were used to finance a mailer supporting the candidacy of Mr. Prince. The mailer was mailed "after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of election." However, no 48 hour notification was filed. Moreover, the required disclaimer was not included even though the mailer expressly advocated Jim Prince's candidacy.

Finally, Complainant contends that the payments by Debra Lee LaPrade and Paul LaPrade caused each of them to exceed applicable contribution limits of the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

Relying on information set forth in the sua sponte submission, counsel for the Democratic Committee argues in response to the complaint that there is no basis for taking action against the Committee or its former treasurer. According to counsel, the Democratic Committee and its former treasurer had no knowledge of or involvement in the unauthorized use of the Committee's name by Mr. Toledano, and the Committee is an "unwitting 'victim' in this matter." Counsel points out that the complaint is filed only on information and belief and is based entirely upon an article that appeared in the *Los Angeles Times*.[1] In this article, Mr. Toledano admits that he engaged in the activity which forms the basis of the complaint against the Democratic Committee and its former treasurer, without consulting with them or obtaining their approval. In short, counsel asserts that the Democratic Committee and its former treasurer were not involved and, consequently, they cannot be held responsible or liable under the Act for any of the alleged violations referred to in the complaint.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits to $1,000 per election the amount which any person may contribute to a candidate and his or her political committee; and limits to $5,000 per calendar year the amount which any person may contribute

[1] Rebecca Trounson, *Chairman's Actions Anger O.C. Democrats*, Los Angeles Times, April 2, 1996, at A-1.

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to any political committee -- other than political committees established and maintained by a national party, which are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(A) and (C). The Act further limits to $5,000 per election the amount which any multicandidate political committee may contribute to any candidate and his or her political committee. 2 U.S.C. § 441a(a)(2)(A). A "multicandidate political committee" means a political committee which has been registered under section 433 of the Act for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). It is a violation of the Act for any candidate or political committee to knowingly accept any contributions which are in violation of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

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The term "contribution" includes (i) 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; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(A)(i) and (ii). It does not include the payment of a State or local committee of a party of the costs of preparing, displaying, or mailing or distributing a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized. 2 U.S.C. § 431(8)(B)(v). In addition, 11 C.F.R. § 100.7(b)(9) requires that the payment of the portion of the costs allocable to Federal candidates be made from funds subject to the limitations and prohibitions of the Act.

The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i). The Commission has defined "anything of value" to include all in-kind contributions, i.e., "the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and services . . . ." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv). Expenditures which are made by any person, including a political committee, "in coordination, consultation or concert with, or at the request or suggestion of, a candidate, his authorized committee or their agents" are considered in-kind contributions to that candidate. 2 U.S.C. § 441a(a)(7)(B)(i). Thus, "[a] communication made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable [in-kind] 'contribution.'" Advisory Opinion 1988-22. In contrast, an expenditure made by a person, including a political committee, which expressly advocates the election or defeat of a clearly identified candidate, but which is not made "in cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which [is] not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate" is an "independent expenditure." See 2 U.S.C. § 431(17).

2 U.S.C. § 441d(a) requires that any person making an expenditure for a communication which expressly advocates the election or defeat of a candidate must include a statement in the communication stating who has paid for the communication and whether or not it has been authorized by the candidate and/or his or her authorized committee.

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2 U.S.C. § 431(4)(C) defines "political committee" as any local committee of a political party which receives total contributions in excess of $5,000 during a calendar year, or makes total payments exempted from the definition of contribution or expenditure as defined by 2 U.S.C. § 431(8) and (9) in excess of $5,000 during a calendar year, or makes total contributions or expenditures in excess of $1,000 during a calendar year. Political committees must register with the Commission and file periodic reports of their receipts and disbursements. 2 U.S.C. §§ 433(a) and 434(a). Additionally, the principal campaign committee of candidates for Federal office must notify, in writing, either the Clerk of the U.S. House of Representatives, the Secretary of the U.S. Senate, or the Commission, and the Secretary of State, as appropriate, of each contribution totaling $1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A).

11 C.F.R. § 109.1(b)(5) defines an agent as any person who has actual authority, either express or implied, to make or authorize the making of expenditures on behalf of a candidate, or who holds a position within the campaign organization that reasonably appears to confer such authority. Courts have generally held that a principal who grants an agent express or implied authority is responsible for the agent's acts within the scope of his or her employment. *See Weeks v. United States*, 245 U.S. 618, 623 (1918); *see also Rouse Woodstock, Inc. v. Surety Federal Savings & Loan Ass'n*, 639 F. Supp. 1004, 1010-11 (N.D. Ill. 1986) (principal who places agent in position of authority normally must accept agent's abuse of that authority). Moreover, a principal who holds out the agent as one having authority or permits the agent to represent that he has authority, so that a reasonable person would believe the agent to have such

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authority, may be liable for the agent's actions on the basis of the agent's apparent authority. *See, e.g., Metco Products, Inc., Division of Case Mfg. Co. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989). In the past, the Commission has held members of the regulated community liable for the acts of their agents. *See* MURs 2602 and 3585.

C. Analysis

It is not contested that James Toledano acted without obtaining the approval of the Democratic Committee or its treasurer in connection with the activity which violated the Act. However, the Democratic Committee is responsible for the actions of its Chair, James Toledano, because he acted with apparent authority. Apparent authority exists where a principal holds out the agent as one having authority or permits the agent to represent that he has authority, so that a reasonable person would believe the agent to have such authority. *See, e.g., Metco Products, Inc., Division of Case Mfg. Co. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989).

As Chair of the Democratic Committee, it is hardly disputable that James Toledano was held out by the Democratic Committee as one having authority. First, Mr. Toledano himself demonstrates that he believed the Office of Chair to have the authority, actual and apparent, with which he acted. He states in his response, "I took the money as Chair of the Party, acting within my discretion as I understood it from the *acts of my predecessors* as Chair of the Orange County Democratic Party and *according to my understanding of the By-laws of the Central Committee.*" (emphasis added).

Moreover, the LaPrades in making their contributions also believed in the apparent authority of James Toledano to accept and expend money in the name of the Democratic Committee. Counsel for the LaPrades states in their response that Debra LaPrade called Mr.

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Toledano at the Orange County Democratic Party and advised him that she and her husband wanted to make contributions for "voter awareness." Counsel also states in the response that Mr. Toledano identified himself as the "party chairman and as an attorney" and that "Debra LaPrade was led to believe that the Democratic party would decide how to effectively utilize their party donations and she therefore left that matter to the good judgment of the Democratic party and its party chairman."

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Finally, the bank where Mr. Toledano deposited the LaPrades' contributions, and the vendors with whom Mr. Toledano dealt in producing and distributing the mailer, believed in his apparent authority. There is no evidence that any of the vendors used in connection with producing and distributing the mailer ever questioned whether Mr. Toledano had the authority to act for the Democratic Committee. Similarly, although the contribution check from the LaPrades was made out to the Democratic Committee, there is no evidence that Mr. Toledano was questioned when he deposited the contribution check into a new account which he had opened in the Democratic Committee's name at the bank where it had an existing account. This particularly demonstrates the bank's belief in Mr. Toledano's apparent authority because counsel for the Democratic Committee believes that Mr. Toledano listed himself as the only signatory on the new account which he opened.

On the basis of the foregoing, it is evident that the persons who were in contact with Mr. Toledano in connection with the activity at issue all reasonably believed in his apparent authority as Chair of the Democratic Committee. Therefore, since the Democratic Committee, as principal, held out Mr. Toledano as having this authority, by virtue of his position as Chair, the Democratic Committee is also responsible for the activity that violated the Act.

Mr. Toledano's expenditures on the mailer in excess of $1,000 dollars were made in connection with Federal elections; thus, they qualified the Democratic Committee for political committee status. *See* 2 U.S.C. § 431(4)(C). However, the Democratic Committee did not qualify as a "multicandidate political committee" because only committees which have been registered with the Commission for 6 months or more and meet other requirements of 2 U.S.C. § 441a(a)(4) are eligible for this status. Still, as a political committee, the Democratic Committee was required to register with the Commission and file periodic reports of its receipts and disbursements. *See* 2 U.S.C. §§ 433(a) and 434(a). Because it failed to meet these requirements of the Act, there is reason to believe the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a).

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Further, the Democratic Committee exceeded the Act's limitation on the amount of money a person may contribute to a candidate. *See* 2 U.S.C. § 441a(a)(1)(A). The contributions which the LaPrades made to the Democratic Committee to be used on "voter awareness" totaled $10,000. Mr. Toledano deposited this full amount into the new bank account he opened in the name of the Democratic Committee. From all indications, the entire $10,000 contribution was then used to finance the production and distribution of the mailer that expressly advocated the Prince candidacy. Moreover, there was coordination between the Democratic Committee and the Prince campaign in the production phase of the mailer. The *Los Angeles Times* article suggests that the Prince Committee knew about the Democratic Committee's endorsement of Jim Prince and had considered a plan to give money to the Democratic Committee to publicize its endorsement of the candidate. Also, in an affidavit submitted with his response in this matter, Mr. Toledano states that he called the Prince campaign and requested a photograph of Jim

Prince. According to Mr. Toledano, an agent of the Prince campaign referred him to a photographer who ultimately delivered the requested photograph.

In his response, Mr. Toledano stated his belief that his use of the $10,000 for the mailer was consistent with the requirements for exemption from the definition of a contribution under 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9). However, this does not survive scrutiny. The mailer only featured 2 candidates for public office rather than the 3 or more required by the Act. Perhaps even more important, this failure to meet a requirement for an exemption from the definition of a contribution resulted from an apparent scheme to circumvent the contribution limits established by the Act; thus, it cannot be overlooked.

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Although this Office does not have a sample of the mailer, the evidence indicates that at least 50% of it was devoted to express advocacy of the Prince candidacy. Accordingly, there is reason to believe the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) in connection with the mailer expressly advocating the Prince candidacy. Further, there is also reason to believe the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. § 441d(a) because the mailer did not include the appropriate disclaimer although it expressly advocated the Prince candidacy.