U. S. Department of Justice

Civil Division

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November 22, 1996

VIA HAND DELIVERY

Lawrence Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Colleen T. Sealander, Esquire

RE: MATTER UNDER REVIEW (MUR) 4545

Dear Mr. Noble:

By letter received at the Department of Justice on November 7, 1996, Ms. Colleen Sealander of your staff wrote to the Attorney General regarding the complaint filed with the Federal Election Commission ("FEC") in the above-captioned Matter Under Review. That complaint stated that the Clinton/Gore '96 Primary Committee chartered a train from Amtrak to transport the President, Vice President, and support staff members to the Democratic National Convention in Chicago, Illinois in August, but alleged that the amount the Committee agreed to pay Amtrak as its allocated share of the President's travel expenses was inadequate. The complaint also alleged that the President and Vice President's travel expenses may have been improperly absorbed or paid for by the federal government. Ms. Sealander's letter sought a response from the Department of Justice regarding whether the United States Government had violated the Federal Election Campaign Act (the "Act"). For the reasons stated below, the United States Government has not violated the Act and, therefore, no action should be taken against the United States Government in this matter.

The complaint apparently asserts that the use of appropriated funds in connection with the President and Vice President's travel to Chicago may have constituted an unreported in-kind campaign contribution by the United States Government to the Clinton/Gore '96 Primary Committee. However, in 1979, the statutory definitions of "contribution" and "person" contained in the Act were amended by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, to emphasize that the use of appropriated funds by the Federal Government does not constitute a "contribution" within the meaning of the Act.

Specifically, the definition of "contribution" was narrowed by adding the phrase "by any person," see 2 U.S.C. § 431(8), to ensure that only a "person" can make a campaign contribution as defined in the Act. At the same time, the Act's definition of "person" was explicitly narrowed to provide that the "term [person] does not include the Federal Government or any authority of the Federal Government." See 2 U.S.C. § 431(11).

Since only persons, as defined in the Act, may make campaign contributions, and the Federal Government is not a "person" within the meaning of the Act, even if there were any expenditure of appropriated funds by the United States Government, such an expenditure does not constitute a political campaign contribution within the meaning of the Act. See H. Rep. 96-422, 96th Cong., 1st Sess. at 7-8 (1979), reprinted in 1979 U.S.C.C.A.N. 2860, 2866 (explaining that the definitions of "contribution" and "person" within the Act were amended to "incorporate the [Federal Election] Commission opinion that the use of appropriated funds of the Federal Government is not a [campaign] contribution").

Moreover, similar allegations of in-kind campaign contributions by the United States government, based on unreimbursed travel expenses incurred by the President and First Lady, were previously considered and dismissed by the FEC in Matters Under Review 4026 (dismissed Feb. 28, 1995), 4132 (dismissed March 5, 1996) and 4216 (dismissed March 5, 1996).

Since the United States Government cannot make a campaign contribution, as defined in the Act, it has not violated the Federal Election Campaign Act.

Respectfully submitted,

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