



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A95-12

January 9, 1997

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA *RC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FRIENDS FOR FRANKS- REFERRAL MATTERS

On November 27, 1996, the Commission approved the final audit report (FAR) on Friends for Franks (the Committee). The report was released to the public on December 10, 1996. The following findings are being referred to your office in accordance with the materiality thresholds approved by the Commission: Recordkeeping for Disbursements and Checks Made Payable to "Cash"; Disclosure of Occupation and Name of Employer; and, Contributions Subject to 48 Hour Disclosure Notices.

With respect to the Recordkeeping for Disbursements and Checks Made Payable to "Cash" finding, please note that the finding is divided into four subsections. In the first subsection, Recordkeeping for Disbursements, the Audit staff's 100% review of disbursements, totaling \$511,944, resulted in 165 recordkeeping errors.. The Committee provided information which satisfied the minimum recordkeeping requirements for all but 29 of the these items, totaling \$12,440, resulting in a revised error rate of 2.4% (\$12,440/\$511,944)

The second subsection, Candidate Loan Reimbursement, deals with a \$2,500 reimbursement to the Candidate which the Committee originally disclosed as a loan reimbursement but later claimed was a reimbursement for campaign expenses incurred at the candidate's residence. This \$2,500 reimbursement is *not* included in the 29 recordkeeping errors discussed in subsection 1. No cancelled check was

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provided relative to the \$2,500 reimbursement to the candidate, nor was any documentation provided relative to the \$2,500 in expenses incurred at the Candidate's residence.

The third subsection, Disbursements to the Candidate's Spouse, deals with the Committee making 20 payments, totaling \$62,500, to the Candidate's spouse, which the Committee noted as payments for services, salary, payroll or consulting on the cancelled checks or in the check register. One payment, in the amount of \$5,000, is included in the 29 recordkeeping errors discussed in subsection 1 because no cancelled check was made available. No information was provided documenting the services provided by the Candidate's spouse. The fourth subsection, Checks Made Payable to "Cash", deals with 19 checks, totaling \$5,205, made payable to "cash" for which the required records were not maintained. These 19 items are included in the 29 recordkeeping errors discussed in subsection 1.

With respect to the Disclosure of Occupation and Name of Employer finding, the Audit staff notes that, in response to the interim audit report, the Committee submitted amended Schedules A (Itemized Receipts). Information included on these amendments lowered the error rate relative to the disclosure of occupation and name of employer from 18.1% to 16.9%. The Committee also submitted a list containing individual contributor information which lowered the error rate relative to the recordkeeping for occupation and name of employer from 45% to 43%. Although much of the missing information was disclosed on the Committee's Schedule A's, the Audit staff does not consider the FEC reports acceptable records since we are attempting to verify the accuracy of the reported information. Committee Counsel argued that if the Committee maintained a copy of its reports that it has met the recordkeeping requirements.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Marty Favin at 219-3720.

Attachments:

- FAR Finding II.A. (Recordkeeping for Disbursements and Checks Made Payable to "Cash"), FAR pages 3-11.
- FAR Finding II.C. (Disclosure of Occupation and Name of Employer), FAR pages 12-15.
- FAR Finding II.D. (Contributions Subject to 48 Hour Disclosure Notices), FAR pages 15-16.

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A. Recordkeeping for Disbursements and Checks Made Payable to "Cash"

Section 432(c)(5) of Title 2 of the United States Code requires the treasurer of a political committee to keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200.

Section 102.9(b)(1)(iv) of Title 11 of the Code of Federal Regulations defines "purpose" as a brief statement or description of why the disbursement was made.

Section 102.11 of Title 11 of the Code of Federal Regulations states, in part, that a political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction. If a petty cash fund is maintained, a written journal of all disbursements shall be maintained which includes the name and address of every person to whom any disbursement is made, as well as the date, amount, and purpose of such disbursement.

Section 434(b)(5)(A) Title 2 of the United States Code states that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

1. Recordkeeping for Disbursements

The Audit staff reviewed all Committee disbursements to determine if records were maintained as required. The scope of this review was limited because approximately half of the disbursement records provided were generated by the Committee rather than the payees (such as invoices, receipted bills, etc.). Although cancelled checks were made available for most of the remainder, cancelled checks were not available for 34 Committee disbursements, totaling \$24,832, at the close of audit fieldwork. Included in these 34 items was one check to the Candidate disclosed by the Committee as "Reimbursement of Loan," three checks to the Candidate's spouse and six checks made payable to "Cash."

The Audit staff determined that the records maintained for 165 disbursements, totaling \$194,037, did not contain the payees' address, as required. This accounts for 38% of the total dollar value of the Committee's disbursements. In addition to the address omissions, the purpose for 33 of the items was missing or inadequate.

At the exit conference, the Audit staff explained that the missing information was disclosed on the Committee's reports for many of the recordkeeping errors (47% of the items, which accounted for 79% of the total dollar value of the errors). A listing of the 165 recordkeeping errors was provided to the Committee. The Committee's Counsel stated that in his opinion, if the Committee maintained a copy of its reports that it has met the recordkeeping requirements. The Audit staff explained that documentation with which to verify the accuracy of the information disclosed by the Committee is necessary; copies of the disclosure reports are not sufficient.

Subsequent to the exit conference, the Committee provided a listing which contained the missing information for 113 of the 165 recordkeeping errors.^{3/} This accounts for 64% of the total dollar value of the 165 errors. Additional documentation relative to 20 payments to the Candidate's spouse (see Section II.A.3.) or the 19 checks made payable to "cash"

^{3/} The majority of this information corrected items for which no payee addresses were maintained in the Committee's files. No vendor generated documentation was provided (such as invoices, receipted bills, etc.)

(see Section II.A.4.) was not provided. A listing of the 52 items, totaling \$70,365, for which no documentation was provided was attached to the interim audit report.

In the interim audit report, the Audit staff recommended that the Committee submit the required information relative to the remaining 52 recordkeeping errors. It was further recommended that the Committee submit photocopies of the 34 cancelled checks (front and back) not previously made available to the Audit staff.

In the Committee's response to the interim audit report, the Committee submitted a listing of the 52 items noted by the Audit staff as recordkeeping errors. The Committee also submitted photocopies of 24 of the 34 cancelled checks (front and back) not previously made available to the Audit staff.

The listing of 52 items submitted by the Committee included the purpose "Campaign Consultant, Fundraiser" relative to the 20 payments to the Candidate's spouse (see Section II.A.3.). Although the Committee met the minimum recordkeeping requirements of 11 CFR §102.9(b) relative to 19 of these 20 payments (no cancelled check was provided for one \$5,000 payment), the Audit staff notes that the Committee did not provide documentation which demonstrated that bona fide services were provided by the Candidate's spouse (see Section II.A.3.). In addition, the Committee provided payees' addresses related to four of the 52 recordkeeping errors. Of the remaining 29 errors (52 - 19 - 4), 19 were checks made payable to "cash" (see Section II.A.4.).

Additionally, no explanation was provided by the Committee regarding the 10 (34 - 24) remaining cancelled checks requested by the Audit staff. Among the 10 disbursements for which no cancelled checks were submitted were a \$2,500 reimbursement to the Candidate in June 1994 (see Section II.A.2.) and the \$5,000 payment to the Candidate's spouse noted above.

2. Candidate Loan Reimbursement

The Committee disclosed the receipt of a \$2,500 loan from Gary A. Franks (the Candidate), once on its April 1994 Quarterly report and again on its July 1994 Quarterly report. The Audit staff was unable to locate or identify any deposits related to a Candidate loan. The Committee disclosed a \$2,500 payment to the Candidate with the purpose noted as "Reimbursement of Loan" on its July 1994 Quarterly report. No cancelled check was available to support this reported transaction, however, on June 22, 1994 a \$2,500 check did clear the Committee's account -- the check number as recorded in the check register matched the check number recorded on the bank statement.

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The Committee's Counsel explained that the Candidate did not make a loan to the Committee. A signed statement from the Candidate was provided to the Audit staff on August 25, 1995 which explained that in March 1994 he had written a \$2,500 check to the Committee to meet a campaign goal but that when he learned that the goal had already been reached, he asked the Committee to nullify the loan. He then stated that he was informed that the check had been "inadvertently misplaced" but the FEC report which contained the disclosure of the loan had already been sent. The Candidate added that "[t]he repayment of the loan on the subsequent report was shown in order to balance the campaign books from an accounting perspective."

The Candidate then explained in his statement that "[a]fter submitting campaign expenses covering several months, I received a check dated June 22, 1994 for reimbursement to me for travel, phone, rent, meals, utilities and miscellaneous expenses." At the exit conference, the Committee's Counsel explained that these expenses were incurred by the Candidate when the Committee was running its operations from the Candidate's residence.^{4/}

The only information contained in the Committee's records relative to expenses apparently incurred by the Candidate when using his residence for the Committee's headquarters were two cancelled checks. The Committee disclosed two reimbursements to the Candidate during the audit period. One reimbursement check was dated September 20, 1993 for which the Committee disclosed the purpose as "Phone Charges." The second check was dated September 8, 1994 for which the Committee disclosed the purpose as "Reimbursement phone, faxes, mileage."

The Candidate also added in this statement that "I can readily understand the present mix-up, therefore I will do the following: I will contribute \$2500.00 to my campaign and I will take all the aforementioned incurred expenses as an in-kind contribution to my campaign, and I will forego the \$2500 reimbursement." The Committee submitted a photocopy of a check (front only) from Congressman Franks to the Committee, in the amount of \$2,500.

No explanation was provided regarding the disclosure of the \$2,500 loan twice. At the exit conference the Audit staff requested documentation in support of the expenses for incidentals described in the Congressman's statement but the Committee's Counsel stated that these records were not available.

^{4/} The Audit staff noted that there was only one payment made by the Committee for rent during the audit period which was paid by a check dated July 5, 1994 in the amount of \$900 to a vendor. The purpose noted on the cancelled check relative to this payment was "3 months rent."

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He added that the Committee "stopped doing incidentals out of the Congressman's residence after the loan repayment" - which was received on June 22, 1994 per the Candidate's statement. The Committee's Counsel also stated that an additional statement from the Candidate would be provided.

The Committee was afforded 10 days to submit documentation related to the matters presented at the exit conference. An additional signed statement from the Candidate was provided to the Audit staff within this 10 day period. In this statement, the Candidate provided the same details as described in his first statement and added that "[i]n an abundance of caution, on August 25, 1995, I wrote a check in the amount of \$2,500 to my campaign so that the record is clear that I did not benefit in any way as a result of the inadvertent mix-up regarding the loan." He continued that "the campaign will amend its reports to (1) eliminate the two references to the \$2,500 loans, (2) show that the June 22, 1994 \$2,500 payment was a reimbursement for campaign expenses I incurred in the months prior rather than a repayment of a loan, and (3) revise the reports leading up to the June 22, 1994 payment to me. The revised report will show the expenses I incurred on behalf of the campaign."

Although not in effect during the period covered by the audit, the "personal use of campaign funds" regulations at 11 CFR §113.1(g)(1)(i)(E), effective April 5, 1995, state that "personal use" includes but is not limited to the use of funds in a campaign account for mortgage, rent or utility payments: (1) for any part of any personal residence of the candidate or a member of the candidate's family; or (2) for real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

Prior to these revised regulations, the Commission's legal interpretation of "personal use" was set forth in the Commission's advisory opinions. Advisory Opinion (AO) 1988-13 allowed a candidate to rent space to his campaign committee, as long as such rental payments were the usual and normal charge for the facilities in question and AO 1985-42 allowed for campaign funds to be used to pay the rent on an apartment used by a candidate and his campaign staff. AO 1992-1 allowed a candidate to be reimbursed by his campaign committee for the following campaign-related expenses: travel, subsistence, telephone, postage and photocopying, as well as requiring the candidate to provide the Committee with the documentation required by 11 CFR §102.9(b).

In the interim audit report, the Audit staff recommended that the Committee submit documentation, such as receipts and utility bills, to document any campaign expenses incurred at the Candidate's residence. The report further noted

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that additional recommendations may be warranted regarding any campaign expenses incurred at the Candidate's residence once this information had been reviewed by the Audit staff.

In the Committee's response to the interim audit report, the Committee submitted a written statement from the Committee's former Campaign Manager stating that he had personal knowledge that the Candidate incurred at least \$2,500 in expenses on behalf of the Committee prior to the Committee issuing a \$2,500 reimbursement check to the Candidate in June 1994 relative to these expenses. He added that these expenses were as follows:

Newspapers	\$12.00 per week x 78 weeks = \$936.00
Meals	\$11.50 per week x 78 weeks = \$897.00
Mileage	40 miles at .26 x 78 weeks = \$811.20

The former Campaign Manager further stated that although these expenses on behalf of the Committee exceeded \$2,500, the Candidate only received reimbursement of \$2,500. He added that the \$2,500 check from the Candidate to the Committee in August 1995 was made "...because of the confusion over the series of transactions involving these funds." The Committee filed an amended Schedule B (Itemized Disbursements) which revised the "purpose of disbursement" relative to the June 1994 payment to the Candidate from "Reimbursement of Loan" to "Reimbursement for 78 wks of meals, mileage, and newspapers."

The Audit staff notes that no documentation, other than this written statement, was provided relative to the campaign expenses incurred by the Candidate at his residence. Currently, 11 CFR §113.1(g)(1)(ii) states, in part, that the Commission will determine on a case by case basis whether payments from campaign funds for expenses such as meals, travel and subsistence would fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use.

3. Disbursements to the Candidate's Spouse

Twenty of the 165 recordkeeping errors, totaling \$62,500, were payments made to the Candidate's spouse. Examples of the purposes noted by the Committee on the memo line of the checks and/or recorded in the check register for these payments were as follows: services, salary, payroll and consulting. No consulting agreements or payroll records were provided to the Audit staff in support of these payments. As a result, we were unable to determine what services were provided. Cancelled checks were available for 17 of these 20 payments.

At the exit conference, the Committee's Counsel explained that the 20 disbursements to the Candidate's spouse were related to consulting services she provided in the fundraising area and that no consulting agreement was available.

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He added that there were some press inquiries into this situation during the audit period and that records exist to support the consulting services she performed.

Although not in effect during the period covered by the audit, the "personal use of campaign funds" regulations at 11 CFR §113.1(g)(1)(i)(H), effective April 5, 1995, state that "personal use" includes but is not limited to the use of funds in a campaign account for salary payments to a member of the candidate's family, unless the family member is providing bona fide services to the campaign. The regulation adds that if a family member (which includes the spouse of the candidate) provides bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.

As discussed above in Section II.A.2., prior to these revised regulations, the Commission's legal interpretation of "personal use" was set forth in the Commission's advisory opinions. Advisory Opinion (AO) 1992-4 concluded that a campaign committee could hire the candidate's wife and pay her a salary to compensate her for services provided to the campaign.

In the interim audit report, the Audit staff recommended that the Committee submit documentation, such as consulting agreements, payroll records or other information, to document the services provided to the Committee by the Candidate's spouse. The report further noted that additional recommendations may be warranted regarding the services provided to the Committee by the Candidate's spouse once this information had been reviewed by the Audit staff.

In the Committee's response to the interim audit report, the Committee submitted a written statement from the Committee's Assistant Treasurer, explaining that the consulting arrangement with the Candidate's spouse covered calendar year 1994 ^{5/} and is still in effect. She stated that the Candidate's spouse acted as a fundraising consultant whose duties included arranging fundraising events, soliciting contributions, preparing thank you notes and purchasing media time for the campaign.

The Audit staff notes that other than this written statement, no consulting agreements, or other information documenting the activities performed by the Candidate's spouse, were provided.

4. Checks Made Payable to "Cash"

Also included in the 165 recordkeeping errors were 19 checks, totaling \$5,205, made payable to "cash." The Audit

^{5/} The Audit staff notes that nine of the payments to the Candidate's spouse were made in calendar year 1993.

staff determined that the required records were not maintained relative to these payments. The recordkeeping deficiencies were in the following categories: (1) missing or inadequate purpose; (2) no record of the name of the recipient of the cash; and, (3) no record of the cash recipient's address. The Committee did not maintain a written journal relative to the distribution of cash.

The Committee itemized all 19 of these payments on its disclosure reports. One was disclosed as "Petty Cash" and the remaining 18 were disclosed as "Cash." Purposes were disclosed for all 19 payments but none of the names and addresses of the recipients of the cash were disclosed. The Committee also disclosed a \$1,000 receipt as a "Refund to petty cash" on March 31, 1994 which was possibly related to two checks made payable to "cash," totaling \$2,000, dated March 24, 1994 and March 25, 1994. The purpose disclosed for these two payments was "Chicago Trip." At the exit conference, Committee representatives stated that the Committee did not know who received this cash and that at this time it would be difficult to determine.

Seventeen of the 19 checks made payable to "cash" were in excess of \$100. The excessive portions of these payments totaled \$3,325. At the exit conference, the Committee was provided with a listing of the 19 items made payable to "cash." The Committee's Counsel stated that it was unlikely that the 17 payments noted by the Audit staff as in excess of \$100 were excessive because each payment could conceivably be broken down into several payments of less than \$100. We responded that until the Committee provided documentation which details how the funds were spent, the Audit staff would treat each check made payable to cash as a single purchase or transaction.

In the interim audit report, the Audit staff recommended that the Committee submit amended Schedules B (Itemized Disbursements), if required, disclosing the names and addresses of the persons who received the cash from the 19 checks made payable to "cash" noted above. It was further recommended that Committee provide documentation which demonstrated that the 17 cash payments in excess of \$100 complied with 11 CFR §102.11.

It was also recommended that in the future, the Committee should adopt and implement procedures to insure compliance with 11 CFR §102.11 relative to checks payable to "cash." Furthermore, if the Committee decided to set up a petty cash fund, no disbursements should be made to any person in connection with a single purchase or transaction in excess of \$100 and a written journal of all disbursements should be maintained which includes the name and address of every person to whom any disbursement is made, as well as the date, amount, and purpose of such disbursement.

In the Committee's response to the interim audit report, the Committee Counsel stated that "[d]espite diligent efforts to determine the purpose of each cash disbursement from

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the 1994 campaign, it is impossible to reconstruct that information with specificity" and that "Committee staff generally recalls that many cash payments were for small items that cost less than \$100 such as food and gas money." He added that the Candidate's current authorized Committee has implemented new procedures so that petty cash is handled properly in the future.

The Committee also submitted a written statement from the Committee's Assistant Treasurer stating that these revised procedures require that the date, amount, payee and purpose for each petty cash disbursement be recorded in a journal and that if payments to the same payee aggregate in excess of \$200 in a calendar year, the disbursement is itemized on the Committee's disclosure reports.^{6/} She added that disbursements are also monitored to ensure that no cash payments exceed \$100.

^{6/} A record of each payee's address is also required (11 CFR §102.11).

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C. Disclosure of Occupation and Name of Employer

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or

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contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" as, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

Section 432(i) of Title 2 of the United States Code states, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act.

Sections 104.7(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act, any report of such committee shall be considered in compliance with the Act. The treasurer and the committee will only be deemed to have exercised best efforts if all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer; the treasurer makes at least one effort after the receipt of the contribution, in either a written request or documented oral request, within thirty days of the receipt of the contribution, to obtain the information; and, the treasurer reports all contributor information not provided by the contributor, but in the committee's possession, including information in contributor records, fundraising records and previously filed reports, in the same two year election cycle. (The effective date of this regulation was March 3, 1994).^{8/}

The Audit staff reviewed contributions received from individuals on a sample basis. This review was limited because no computerized file or listing of all contributions received during the audit period was made available. In addition, the Committee had no system in place to aggregate contributions.

^{8/} This regulation also includes the provision that to demonstrate best efforts, the written solicitations must contain a statement that the requested contributor information is required by Federal law. However, on February 20, 1996, the Court of Appeals for the D.C. Circuit invalidated the mandatory statement provision. [Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996)] The court provided that the following language appears to satisfy the best efforts requirement: "Federal law requires us to use our best efforts to collect the information." [RNC, 76 F.3d at 406]

The sample results indicated that for a material number of the reported entries tested, the occupation and name of employer was not disclosed. Our review also indicated that for 45% of the items tested, no record was maintained detailing the contributor's occupation and name of employer.

The Committee was unable to demonstrate that it had exercised best efforts to obtain, maintain and submit the required occupation and name of employer information because no written solicitations or response materials requesting this information were made available to the Audit staff. Also, no evidence of written or oral requests to contributors for the missing information was provided.^{9/} At the exit conference, the Committee's Counsel stated that the Committee was unable to locate these materials.

In the interim audit report, the Audit staff recommended that the Committee provide the following documentation or corrective amendments:

- ° Solicitation materials which demonstrated that best efforts had been used to obtain, maintain and submit the required disclosure information, as well as any evidence of written or oral requests to contributors for this information; or
- ° Absent such demonstration, the Committee was requested to make an effort to contact those individuals whose contributions aggregated in excess of \$200 in a calendar year and whose required information was missing or incomplete. These contributors were to be requested to submit this information and to be informed that Federal law required the Committee to disclose such information;
- ° Documentation of any such contacts; and
- ° Amended Schedules A (Itemized Receipts) to disclose any information obtained from those contacts.

In the Committee's response to the interim audit report, the Committee submitted a written statement from the Committee's Assistant Treasurer explaining that the Committee is exercising best efforts to obtain contributor information and that when a contribution is made in excess of \$200 without the occupation and name of employer, written communication is made to the contributor to seek the information from the contributor. A sample form requesting this information was enclosed, but there

^{9/} The majority of the errors involved contributions dated after the effective date of the change to 11 CFR §104.7. The Committee did not satisfy the best efforts provision of either the current or former regulation.

is no evidence that this form was used during the period covered by the audit. It appears that this form is being utilized by the current authorized campaign committee for this Candidate.

The Committee also submitted a listing of some individuals who contributed to the Committee in 1994 along with their occupation and name of employer information. However, this listing did not materially correct the errors noted by the Audit staff during our review. In addition, the Committee filed amended Schedules A relative to the period covered by the audit, but these amendments did not materially correct the disclosure omissions noted during our review.

D. Contributions Subject to 48 Hour Disclosure Notices

Section 434(a)(6) of Title 2 of the United States Code requires that each treasurer of the principal campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

The Audit staff reviewed all contributions received by the Committee within two and twenty days of the Connecticut Convention and General Election to identify all contributions of \$1,000 or more. On July 21, 1994, the Candidate ran unopposed in the Convention and as a result, was required to file 48 hour notices for contributions of \$1,000 or more received between July 2, 1994 and July 18, 1994.^{10/} Since the date of the General Election was November 8, 1994, the Committee was required to file 48 hour notices for contributions of \$1,000 or more received between October 20, 1994 and November 5, 1994. The Audit staff determined that the Committee did not file the required 48 hour notices for 16 contributions, totaling \$20,000.

At the exit conference, the Committee was provided with a schedule of these items. No explanation was provided by the Committee regarding this matter.

In the interim audit report, the Audit staff recommended that the Committee provide an explanation, including an account of any mitigating circumstances, as to why these

^{10/} As a result of the Convention, no Primary Run-off Election (scheduled for September 13, 1994) was necessary for the Candidate.

notices were not filed or were filed late. In the Committee's response to the interim audit report, a signed statement from the former Campaign Manager was submitted which stated that he

believed that all required 48 hour notices were "...faxed to the Reports Analysis Division of the Federal Election Commission" and that he could not recall the exact dates on which they were sent.

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4611
Audit Referral Date: January 9, 1997
Date Activated: May 12, 1997

Staff member: Joel J. Roessner

SOURCE: AUDIT REFERRAL

RESPONDENTS: Friends for Franks, and Frank Hitchcock, as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(13)(A)
2 U.S.C. § 432(c)(5)
2 U.S.C. § 432(d)
2 U.S.C. § 432(h)(2)
2 U.S.C. § 432(i)
2 U.S.C. § 434
2 U.S.C. § 434(a)(6)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 439a

11 C.F.R. § 102.9(b)
11 C.F.R. § 102.9(b)(1)(iv)
11 C.F.R. § 102.11
11 C.F.R. § 104.7(b)
11 C.F.R. § 104.14(b)(1)
11 C.F.R. § 104.14(b)(3)
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.1(g)(1)(i)(A)
11 C.F.R. § 113.1(g)(1)(i)(H)
11 C.F.R. § 113.1(g)(1)(ii)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

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I. GENERATION OF MATTER

This matter was generated by an audit undertaken in accordance with 2 U.S.C. § 438(b) of Friends for Franks ("Committee"), the authorized committee of Gary A. Franks, a candidate for the House of Representatives, from 5th District for the State of Connecticut in the 1994 elections. Frank Hitchcock is the treasurer of the Committee.¹

The Audit Division referred this matter to the Office of General Counsel on January 9, 1997.² The Audit Division referred three issues: (1) improper recordkeeping for disbursements and checks made payable to "cash;" (2) the failure to disclose contributor occupation and employer name; and (3) the failure to properly report contributions subject to the 48-hour notification rule. Attachment 1.

The Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(2), 434(a)(6), 434(b)(3)(A), 434(b)(5)(A), and 11 C.F.R. §§ 102.9(b), 102.11, and 104.14(b)(1), but take no further action with respect to these apparent violations and close the file.

II. FACTUAL AND LEGAL ANALYSIS

During the period audited, the Committee made 327 disbursements totaling \$511,943.76. The Committee failed to maintain the supporting records required by 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 104.14(b)(1) with respect to numerous disbursements, which the

¹ Gary A. Franks was unopposed, for nomination, and won the 1994 race with 52.2% of the vote. He was unseated in the 1996 election.

² The audit covered the period from May 13, 1993 through December 31, 1994.

Audit Division grouped into four categories: (1) recordkeeping for disbursements; (2) checks payable to "cash;" (3) candidate loan reimbursement; and (4) disbursements to the Candidate's spouse.

A. THE APPLICABLE LAW

The treasurer of a political committee is required to keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200. 2 U.S.C. § 432(c)(5); 11 C.F.R. § 102.9(b). The Commission's regulations define "purpose" as a brief statement or description of why the disbursement was made. 11 C.F.R. § 102.9(b)(1)(iv). These records must be maintained for three years after the report is filed. 2 U.S.C. § 432(d).

In addition, a treasurer must report the name and address of each person to whom an aggregate expenditure of over \$200 is paid in a calendar year, together with the date, amount, and purpose of each operating expenditure. 2 U.S.C. § 434(b)(5)(A). A treasurer who is required to make such a report also must maintain records, "including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness." 11 C.F.R. § 104.14(b)(1). Moreover, such records must be kept available for audit, inspection, or examination by the Commission or its representatives. 11 C.F.R. § 104.14(b)(3). These supporting records must be maintained for at least three years after the report or statement is filed. *Id*

A political committee may maintain a petty cash fund for disbursements of \$100 or less. 2 U.S.C. § 432(h)(2); 11 C.F.R. § 102.11. If a petty cash fund is maintained, a political committee must maintain a written journal which includes the name and address of every person to whom a disbursement is made, as well as the date, amount and purpose of the disbursement. *Id.*

Committees must disclose the identity of each person who makes a contribution during the reporting period which alone, or combined with other contributions from that person within the calendar year, has an aggregate value in excess of \$200. 2 U.S.C. § 434(b)(3)(A). In the case of a contributor who is an individual, identification requires that a political committee report the contributor's name, mailing address, occupation and the name and address of his or her employer. 2 U.S.C. § 431(13)(A). A treasurer of a political committee who shows that best efforts have been used to obtain, maintain and submit information required by the Act is deemed in compliance with the Act.⁵ 2 U.S.C. § 432(i).

During the first part of the period covered by the audit, May 13, 1993 through March 2, 1994, the Commission's regulation implementing the "best efforts" rule required the treasurer of a political committee to show that the original solicitation included a clear request for the required information and informed the contributor that the reporting of the information was required by law. 11 C.F.R. § 104.7(b), amended by 58 Fed. Reg. 57,725, 57,729 (1993). Effective March 3, 1994, the "best efforts" rule required that a treasurer make

⁵ "Act" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 et seq.

a follow-up request for the information from contributors who have not disclosed the required information.⁴ *Id.*

The treasurer of a candidate's principal campaign committee must give written notice of any contribution of \$1,000 or more received between 20 days and 48 hours prior to any election. 2 U.S.C. § 434(a)(6). The notification must be given within 48 hours after receipt of the contribution. *Id.* The notice must include the name of the candidate, the office sought, the identification of the contributor, and the date of receipt and amount of the contribution. *Id.*

B. RECORDKEEPING FOR DISBURSEMENTS AND CHECKS MADE PAYABLE TO "CASH"

During the audit, the Audit Division concluded that the Committee failed to keep a record of the payee's address for 165 disbursements, totaling \$194,037. *See* 11 C.F.R. § 102.9(b). The Committee also failed to keep a record of the payee name and/or purpose of the disbursement, and failed to keep a canceled check or other receipt, for many of these 165 disbursements. *Id.*

These 165 disbursements included 19 checks payable to "cash," totaling \$5,205. Seventeen of these checks to "cash" were in an amount in excess of \$100. At the exit conference, the Committee's counsel stated that the 17 checks paid to cash in amounts in

⁴ The United States Court of Appeals for the District of Columbia Circuit upheld the additional requirement of the follow-up request, but it struck down the part of the Commission's regulation which mandated that the follow-up request state that federal law requires a committee to report the information for each contributor, holding that such a statement did not correctly state the requirements of the statute. *Republican National Committee, et al. v. FEC*, 76 F.3d 400 (D.C. Cir. 1996), *cert. denied* ___ U.S. ___, 117 S.Ct. 682, 136 L.Ed.2d 607 (1997). Following the decision in *Republican National Committee*, 11 C.F.R. § 104.7(b) was again amended and, effective July 2, 1997, a follow-up request must contain an accurate statement of federal law regarding the collection and reporting of contributor information. 11 C.F.R. § 104.7(b), *amended by* 62 Fed. Reg. 23,335, April 30, 1997; 62 Fed. Reg. 35,670, July 2 1997.

excess of \$100 could be divided into several payments of less than \$100. However, the Committee did not maintain a written ledger for petty cash disbursements. See 2 U.S.C. § 432(h)(2) and 11 C.F.R. § 102.11. The Interim Audit Report recommended that the Committee submit amended Schedules B (Itemized Disbursements) setting forth the names and addresses of the recipients of the 19 checks payable to cash, and that the Committee provide records to substantiate its claim that the disbursements did not exceed \$100 with respect to any person per purchase or transaction.

Following the exit conference and the interim Audit Report, the Committee provided additional information with respect to payees' identities and addresses and the purposes of the distributions, but it still failed to satisfy minimum recordkeeping requirements with respect to 29 disbursements, totaling \$12,440, including the 19 checks payable to cash. See 11 C.F.R. § 102.9(b). Specifically, the Committee (1) failed to keep a record of the payee's address for seven disbursements, totaling \$1,160; (2) failed to keep a record of the payee's name and address for six disbursements, totaling \$1,080; (3) failed to keep a record of the payee's name and address and the purpose for 11 disbursements, totaling \$3,775; (4) failed to keep a record of the payee's address and the purpose for three disbursements, totaling \$750; (5) failed to keep a record the purpose of one \$675 disbursement; and (6) failed to keep a canceled check for one \$5,000 disbursement.

With respect to the checks paid to cash, the Committee's response to the Interim Audit Report states that it was not possible for the Committee to reconstruct the payment information, but that Committee staff recalls that the expenditures were generally for cash disbursements of less than \$100 for items such as food and gas. The Committee's

representations suggest that the checks paid to cash were in fact funding a *de facto* petty cash account. However, the Committee's representations of its staff's general recollections of the purposes of the checks paid to "cash" do not satisfy the requirements that a political committee keep an account of, and report, the payee name, payee address and purpose of campaign disbursements. 2 U.S.C. §§ 432(c)(5), 434(b)(5)(A); 11 C.F.R. § 102.9(b). Even if the Committee is correct in its representation that the payments could be divided into expenditures of less than \$100, the Committee should have maintained a journal of such petty cash expenditures. 2 U.S.C. § 432(h)(2); 11 C.F.R. § 102.11.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to keep an account of the payee name, payee address and purpose of 29 expenditures in the amount of \$12,440 in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b). The Office of General Counsel recommends that the Commission also find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to report the payee name, payee address and purpose of these 29 expenditures in violation of 2 U.S.C. § 434(b)(5)(A). Moreover, this Office recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain a written journal of petty cash expenditures \$100 or less, in violation of 2 U.S.C. § 432(h)(2) and 11 C.F.R. § 102.11.

C. CANDIDATE LOAN REIMBURSEMENT

The Committee reported receipt of a \$2,500 loan from the candidate on its April 1994 Quarterly report and again on its July 1994 Quarterly report. However, the Audit Division was unable to locate any deposits reflecting the Committee's receipt of funds from the

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candidate. The Committee also paid \$2,500 to the candidate by a check which cleared the Committee's account on June 22, 1994, and reported the transaction as reimbursement of a candidate loan.

The candidate provided a written statement to the Commission, dated August 25, 1995, in which he explained that he wrote a \$2,500 check as a loan to the Committee to meet a fundraising goal, but later when the goal was met, asked the Committee to nullify the loan and return the check. Attachment 2. The candidate explained that the Committee then informed him that the check had been misplaced. *Id.* Because the loan had already been reported to the Commission, the Committee reported a repayment so as "to balance the campaign books from an accounting perspective." *Id.*

With respect to the \$2,500 check paid to the candidate, the candidate stated that the payment was reimbursement for "travel, phone, rent, meals, utilities and miscellaneous expenses." *Id.* The candidate concluded that he would "contribute" (i.e., repay) \$2,500 to his campaign and forgo reimbursement of the alleged expenses as an "in-kind" contribution to the campaign. *Id.*

At the exit conference, the Audit Division requested documentation to support the candidate's claimed expenses, but was informed by the Committee's counsel that the records were not available. Following the exit conference, the candidate provided an additional written statement, dated September 20, 1995, in which he reiterated his previous written statement, confirmed that he had repaid \$2,500 to the Committee, and stated that the

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Committee's quarterly reports would be amended to reflect these representations.

Attachment 3.⁵

The Interim Audit Report recommended that the Committee submit documentation to support the claimed campaign expenses for which the candidate received reimbursement. The Committee's response included a written statement from the candidate's former campaign manager, dated June 21, 1996. Attachment 4. Therein, the campaign manager represented that he had personal knowledge that the candidate incurred the following expenses over a 78-week period:

Newspapers:	\$936.00 (\$12.00/week)
Meals	\$897.00 (11.50/week)
Mileage	\$811.20 (40 miles/week at \$0.26/mile)

The Committee's treasurer was required to maintain records such as "vouchers, worksheets, receipts, bills and accounts . . .," to substantiate the claimed expenditures. 11 C.F.R. § 104.14(b)(1). The campaign manager's brief after-the-fact statement does not meet this standard, and furthermore, is inconsistent with the candidate's earlier statements that the expenses for which he received reimbursement include, among other things, telephone, rent and utility expenses. Therefore, the Committee failed to maintain sufficient records for the Audit staff to verify the \$2,500 in expenditures for accuracy and completeness as required by 11 C.F.R. § 104.14(b)(1).

The Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain sufficient records from which a \$2,500 disbursement to the candidate may be verified and

⁵ The Committee filed an amended Schedule B, in which the stated purpose of the June 1994 payment to the candidate was "[r]eimbursement for 78 wks of meals, mileage and newspapers."

checked for accuracy and completeness, in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 104.14(b)(1), but take no further action. In addition, because the failure to maintain supporting records prevents the Commission from evaluating whether the \$2,500 disbursed to the candidate may have in fact been improperly converted to the candidate's personal use, the Office of General Counsel recommends that the Commission send the Committee an appropriate letter admonishing the Committee that 11 C.F.R. § 104.14(b)(1) requires the treasurer of a political committee to maintain sufficient records from which disbursements may be verified and checked for accuracy and completeness.⁶ See 2 U.S.C. § 439a.

D. DISBURSEMENTS TO THE CANDIDATE'S SPOUSE

During the period covered by the audit, the Committee made 20 payments to the candidate's spouse, totaling \$62,500. At the exit conference, the Committee's counsel stated that the disbursements were for consulting and fundraising services provided by the candidate's spouse. The Committee's counsel also stated that no consulting agreement was available, but that records exist to support the claim.

The Interim Audit Report recommended that the Committee submit documentation to demonstrate that the candidate's spouse in fact provided services to the campaign. In its response to the Interim Audit Report, the Committee submitted an unsworn statement from its assistant treasurer stating that the candidate's spouse acted as a fundraising consultant whose duties included arranging fundraising events, soliciting contributions, preparing thank you notes and purchasing media time. Attachment 5. The assistant treasurer's statement

⁶ Amounts received by a candidate as contributions may not be converted to personal use by any person, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. 2 U.S.C. § 439a. The Commission decides on a case by case basis whether the use of funds from a campaign account for meal expenses, vehicle expenses and other purposes is prohibited "personal use." 11 C.F.R. § 113.1(g)(1)(ii).

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contains no detailed information regarding the terms of the consulting agreement between the Committee and the candidate's spouse, or the relationship between the services she provided and the amounts paid to her.

The Committee's treasurer was required to maintain records such as "vouchers, worksheets, receipts, bills and accounts . . ." to substantiate the claim that the payments to the candidate's spouse were expenditures for consulting services. 2 U.S.C. § 432(c)(5); 11 C.F.R. § 104.14(b)(1). The assistant treasurer's after-the-fact written statement does not meet this standard. The Committee therefore failed to maintain sufficient records for the Audit staff to verify and check for accuracy and completeness the payments to the candidate's spouse as required by 11 C.F.R. § 104.14(b)(1).

The Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain sufficient records from which 20 disbursements to the candidate's spouse, totaling \$62,500, may be verified and checked for accuracy and completeness, in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 104.14(b)(1), but take no further action. If the Commission approves this recommendation, because the failure to maintain supporting records prevents the Commission from evaluating whether the \$62,500 disbursed to the candidate's spouse may have in fact been improperly converted to the candidate's spouse's personal use, the Office of General Counsel will send the Committee an appropriate letter admonishing the Committee that 11 C.F.R. § 104.14(b)(1) requires the treasurer of a political committee to

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maintain sufficient records from which disbursements may be verified and checked for accuracy and completeness.⁷

E. DISCLOSURE OF OCCUPATION AND NAME OF EMPLOYER

The Audit Division conducted a sample review of contributions received from individuals and found that the contributor's occupation and name of employer were not reported for 18% of the sample group. See 2 U.S.C. §§ 431(13)(A); 434(b)(3)(A). The Audit Division also determined that the Committee had no system for determining the aggregate amount of contributions received from individual contributors. During the audit, the Committee did not provide any records related to the solicitation of campaign contributions, or records related to written or documented oral follow-up requests to contributors for the missing information. See 11 C.F.R. § 104.7(b).

The Interim Audit Report requested that the Committee provide copies of materials related to the solicitation of contributions and records verifying that written or documented oral follow-up requests for the missing contributor information had been made. The Interim Audit Report further requested that, if the Committee was unable to provide such records, it should make follow-up requests for the missing contributor information, provide

⁷ The Commission has previously decided that a campaign committee may pay a salary to a candidate's spouse to compensate the spouse "for services provided to the campaign." Advisory Opinion 1992-4 at 2. The payment of campaign funds to a candidate's spouse therefore is not prohibited "personal use" if the payment is in exchange for services actually provided by the spouse. Subsequent to Advisory Opinion 1992-4 and the period covered by the audit, the Commission's regulations were amended to provide that the prohibited "personal use" of campaign funds includes payment of salary to a member of the candidate's family "unless the family member is providing *bona fide* services to the campaign. . . ." 11 C.F.R. § 113.1(g)(1)(i)(H) (1995). The Commission made this amendment in order to be consistent with the Commission's existing policy as reflected in Advisory Opinion 1992-4. Explanation and Justification for 11 C.F.R. § 113.1(g)(1)(i)(H), 60 *Fed. Reg.* 7,862, 7,866 (February 9, 1995).

documentation of such requests and file amended Schedules A (Itemized Receipts) disclosing any information obtained from those requests.

The Committee's response was a statement from its assistant treasurer, dated June 21, 1996, describing how the candidate's campaign committee for the 1996 election ("Franks for Congress") was complying with the "best efforts" rule, and a sample form used by that committee for follow-up requests. Attachment o. However, because the statement addressed only the 1996 Committee's procedures, it did not demonstrate that best efforts had been used with respect to contributions received by Friends for Franks during the 1994 campaign cycle, and therefore is not sufficient.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to disclose the identity of each person who made a contribution during the reporting period which alone, or combined with other contributions from that person within a calendar year, had an aggregate value in excess of \$200, in violation of 2 U.S.C. § 434(b)(3)(A), but take no further action.

F. CONTRIBUTIONS SUBJECT TO 48-HOUR DISCLOSURE NOTICE

The Committee was required to file 48-hour notifications for contributions received between July 2 and July 18, 1994 for the primary election, and October 20 and November 5, 1994 for the general election. The Audit Division determined that the Committee did not file the required reports for a total of 16 contributions, totaling \$20,000, received during these periods. At the exit conference, the Committee offered no explanation for its failure to file 48-hour notifications for these contributions.

The Interim Audit Report recommended that the Committee submit an explanation for its failure to file the 48-hour notices and an account of any mitigating circumstances. The Committee's response to the Interim Audit Report included a statement from the campaign manager that 48-hour notices were timely filed by facsimile transmission directed to the Reports Analysis Division of the Commission. Attachment 7. However, no documentation, such as fax confirmation sheets or phone records, was submitted in support of this contention.

The Office of General Counsel recommends that the Commission find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to report within 48 hours the receipt of 16 contributions, totaling \$20,000, contributed between July 2 and July 18, 1994 and October 20 and November 5, 1994, in violation of 2 U.S.C. § 434(a)(6), but take no further action.

G. CONCLUSION

The Office of General Counsel recommends that the Commission take no further action with respect to the matters identified in this Report, because a substantial period of time has passed since the 1993-1994 election cycle. Furthermore, the candidate lost his seat in the subsequent 1996 general election. Finally, with the exception of the matter of disbursements to the candidate's spouse, the amounts involved in the matters identified in this Report are relatively modest. Accordingly, this Office recommends that the Commission exercise its prosecutorial discretion based on the circumstances of this case and consistent with the proper ordering of the Commission's resources and priorities, take no further action.

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against Friends for Franks, and Frank Hitchcock, as treasurer, and close the file. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to keep an account of the payee name, payee address and purpose of expenditures in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b), and take no further action;
2. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to report the payee name, payee address and purpose of expenditures in violation of 2 U.S.C. § 434(b)(5)(A), and take no further action;
3. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain a written journal of petty cash expenditures less than \$100, in violation of 2 U.S.C. § 432(h)(2) and 11 C.F.R. § 102.11, and take no further action;
4. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain sufficient supporting records of expenditures and disbursements in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 104.14(b)(1), and take no further action;
5. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to disclose the identity of each person who made a contribution during the reporting period which alone, or combined with other contributions from that person within a calendar year, had an aggregate value in excess of \$200, in violation of 2 U.S.C. § 434(b)(3)(A), and take no further action;
6. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to report within 48 hours the receipt of contributions in violation of 2 U.S.C. § 434(a)(6), and take no further action;

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7. Send the appropriate admonishment letter; and
8. Close the file.

Lawrence M. Noble
General Counsel

9/4/97
Date

By: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments:

1. Referral Memorandum, dated January 9, 1997
2. Statement of Gary A. Franks, dated August 25, 1995
3. Statement of Gary A. Franks, dated September 20, 1995
4. Statement [of Richard L. Genua] Regarding \$2,500 Reimbursement, dated June 21, 1996
5. Statement [of Marita Thompson] Regarding Consulting Agreement with Donna Franks, dated June 21, 1996
6. Statement [of Marita Thompson] Regarding Petty Cash and Best Efforts, dated June 21, 1996
7. Statement [of Richard L. Genua] Regarding Forty-Eight Hour Reports, dated June 21, 1996

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Friends for Franks and Frank) MUR 4611
Hitchcock, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 11, 1967, the Commission decided by a vote of 5-0 to take the following actions in MUR 4611:

1. Find reason to believe that Friends for Franks and Frank Hitchcock, as treasurer, failed to keep an account of the payee name, payee address and purpose of expenditures in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b), and take no further action.
2. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to report the payee name, payee address and purpose of expenditures in violation of 2 U.S.C. § 434(b)(5)(A), and take no further action.
3. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain a written journal of petty cash expenditures less than \$100, in violation of 2 U.S.C. § 432(h)(2) and 11 C.F.R. § 102.11, and take no further action.
4. Find reason to believe that Friends for Franks, and Frank Hitchcock, as treasurer, failed to maintain sufficient supporting records of expenditures and disbursements in violation of 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 104.14(b)(1), and take no further action.

(continued)

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5. Find reason to believe that Friends for Franks and Frank Hitchcock, as treasurer, failed to disclose the identity of each person who made a contribution during the reporting period which alone, or combined with other contributions from that person within a calendar year, had an aggregate value in excess of \$200, in violation of 2 U.S.C. § 434(b)(3)(A), and take no further action.
6. Find reason to believe that Friends for Franks and Frank Hitchcock, as treasurer, failed to report within 48 hours the receipt of contributions, in violation of 2 U.S.C. § 434(a)(6), and take no further action.
7. Send the appropriate admonishment letter, as recommended in the General Counsel's Report dated September 4, 1997.
8. Close the file.

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

Attest:

9-12-97
Date

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

Received in the Secretariat: Fri., Sept. 05, 1997 12:23 p.m.
Circulated to the Commission: Mon., Sept. 08, 1997 11:00 a.m.
Deadline for vote: Thurs., Sept. 11, 1997 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 24, 1997

Friends for Franks, and Frank Hitchcock, as treasurer
c/o Kenneth A. Gross, Esquire, Counsel of Record
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

RE: MUR 4611
Friends for Franks, and Frank Hitchcock, as
treasurer

Dear Mr. Gross:

On September 11, 1997, the Federal Election Commission found reason to believe that your client, Friends for Franks, and Frank Hitchcock, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(2), 434(a)(6), 434(b)(3)(A) and 434(b)(5)(A), provisions of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds your client that its failure to keep sufficient records from which disbursements may be verified and checked for accuracy and completeness is a violation of 11 C.F.R. § 104.14(b)(1). Your client should take steps to ensure that this activity does not occur in the future.

The confidentiality provisions at 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 before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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MUR 4611

Friends for Franks, and Frank Hitchcock, as treasurer

Letter to Kenneth A. Gross, Esquire

Page 2

If you have any questions, please contact Joel J. Roessner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry

Chairman

Federal Election Commission

Enclosure: General Counsel Report

cc: Gary A. Franks

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # ~~463~~4611

DATE FILMED 11-24-97 CAMERA NO. 2

CAMERAMAN JmV

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