FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1998

Jay D. Gurmankin, Esq.
BERMAN, GAUFIN, TOMSIC & SAVAGE
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144

RE: MUR: 4621

Dear Attorney Gurmankin:

On March 5, 1997, the Federal Election Commission ("FEC" or "Commission") notified your clients, the Cook 98 Re-election Committee and Avis Lewis, as treasurer ("Committee"), 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 materials submitted in response thereto, the Commission, on July 2,1998 found that there is reason to believe that the Cook 98 Re-election Committee and Avis Lewis, as treasurer, violated 2 U.S.C. § 434(b), a provision 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 and proceed with conciliation.

In its continuing investigation of this matter, the Office of General Counsel will be forwarding to you a letter requesting that your clients provide additional information regarding the Committee's calculation and disclosure of expenditures and assumption of debt during the 1996 election cycle. The Committee is of course expected to maintain any and all information and materials related to its 1996 FEC disclosure filings during the pendency of this action.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause

conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1596.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Cook 98 Re-election Committee and Avis Lewis, as treasurer[1]

MUR: 4621

## I. GENERATION OF MATTER

MUR 4621 originated with a complaint filed by Mike Zuhl, as chairman of the Utah State Democratic Committee (hereinafter "USDC"). 2 U.S.C. § 437g(a)(1).

## II. FACTUAL AND LEGAL ANALYSIS

### A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (hereinafter "FECA" or "Act"), states that an expenditure is a purchase or payment made to influence a federal election. 11 C.F.R. § 100.8(a)(1). A written contract, including a media contract, promise, or agreement to make an expenditure, is considered an expenditure as of the date the contract, promise or obligation is made. 11 C.F.R. § 100.8(a)(2). Agreements to make expenditures over $500, including those memorialized in writing, must be reported as of the date that the debt or obligation is incurred. 11 C.F.R. § 104.11(b). This last point is, of course, true of all campaign debts and obligations, which must be reported in a committee's periodic disclosure filings. 2 U.S.C. § 434(b)(8). For as long as debts remain outstanding a political committee is required to continuously report their existence

[1] In 1996 Merrill Cook won election to Utah's Second Congressional District. At that time, the Cook for Congress Committee was his principal campaign committee. On March 24, 1997, the Committee notified the Federal Election Commission via the filing of an amendment to its Statement of Organization that it had changed its name to the Cook 98 Re-election Committee.

until such time as they are extinguished. 11 C.F.R. § 104.11(a). All outstanding obligations are to be reported in FEC Form 3 Schedule D, with specific references to: the amounts owed; the outstanding balance as of the beginning of the reporting period; the amounts incurred during that reporting period; payments made during that reporting period; and the outstanding balance at the close of the reporting period. Committees are also required to enclose with this schedule a statement setting out the amount(s) paid and explaining the conditions under which such debts were extinguished. 11 C.F.R. § 104.3(d).

Under the Act, a disputed debt is an actual or potential debt owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the committee. 11 C.F.R. § 116.1(d). Disputed debts must be reported as described in the preceding paragraph if a creditor has provided something of value to that political committee. In addition, the committee must disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits to owing and the amount the creditor claims is owed. The report may also reflect that the disclosure does not constitute an admission of liability or a waiver of any claims. Continuous reporting of the dispute is supposed to continue until the matter is resolved. 11 C.F.R. § 116.10.

Should there be some confusion on the part of the treasurer relating to the exact amount of money claimed to be owed by a vendor, the regulations permit the committee to make a reasonable estimate of that figure and then make the appropriate amendation or

correction when the exact amount has been determined. *See*, AO 1980-38. A committee is not required to report the fair market value of what was provided as that may be an issue in dispute. *See* Explanations & Justifications, 34 Fed.Reg. 48580 (11/24/89)

Pursuant to 2 U.S.C. § 431(8)(A)(i), a "contribution" is any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing an election for Federal office. 2 U.S.C. § 431(11) defines "person" as an individual, partnership, committee, association, corporation, labor organization or any other group of persons. It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to political office and for political committees to accept such donations. 2 U.S.C. § 441b(a).

Unincorporated and incorporated vendors, however, are permitted to extend credit to a candidate, political committee or other person in connection with a federal election provided that the extension of credit is in the ordinary course of the vendor's business practices and that the terms of the credit are substantially similar to extensions of credit to non-political entities. 11 C.F.R. § 116.3(a) & (b). Committees and vendors may not negotiate to have outstanding bills paid off for less than the full amount owed as this may result in a contribution to that committee, unless such debts are settled in accordance with the regulatory standards. 11 C.F.R. § 100.7(a)(4).

**B. Factual Background**

The complaint in this matter cited what the USDC believed were specific violations of FECA committed by the Cook 98 Re-election Committee and Avis Lewis, as treasurer (hereinafter "the Committee"). The R.T. Nielson Company (hereinafter

"Nielson") and Phillips, Twede & Spencer, Inc. (hereinafter "PTS") were vendors hired by Merrill Cook to provide consulting services during the 1996 congressional campaign. Both firms are, and were during the relevant time period, incorporated in the state of Utah. The candidate and Nielson entered into a written contract on March 5, 1996 whereby the company was to perform a myriad of campaign related services, including general management, advertising, polling and PAC fund raising. Sometime in March 1996, PTS was retained through an oral agreement to provide advertising and related services on an 'as requested basis'

The USDC alleges that the respondents failed to settle certain of the campaign's 1996 debts for the entire amount owed, or alternately failed to appropriately report said debts in violation of 11 C.F.R. § 116. The Democratic organization also asserts that these payment and/or reporting deficiencies might have resulted in the Committee's receiving contributions pursuant to 11 C.F.R. § 100.7(a)(4). The document also points out that any contributions by Nielson or PTS might be prohibited as corporate donations pursuant to 11 C.F.R. § 114.2(b) or could be in excess of the allowable limits, per 11 C.F.R. § 110.1.

As grounds for these charges the USDC cites a Nielson press release issued on January 24, 1997 and an article appearing in the January 25, 1997 Deseret News.[2] The press release states that the Cook campaign was in arrears for over $200,000 and quotes the company's president, Ron T. Nielson, as being "...concerned that Merrill Cook is forcing us to carry a loan for the campaign, which may be in violation of FEC law." Mr.

[2] See, R.T. Nielson Company Press Release, *Cook Consulting Team Quits Because of Non-payment*, January 24, 1997 and Bob Bernick, Jr., *Firms Say Cook Refuses to Pay Up*, Deseret News, January 25, 1997.

Nielson also stated that "... a FEC violation has occurred in reporting debt amounts as well." The release indicates that the firm had filed suit against the candidate. The newspaper article reiterates Nielson's charges and also states that PTS was close to filing suit against the Cook campaign to recoup $16,000 in consulting fees. According to the article, both Nielson and PTS disputed the accuracy of the amount of debt that the campaign had reported to the Federal Election Commission (hereinafter "Commission" or "FEC"). The two firms are reported as claiming that the moneys owed them amounted to much more than the $53,000 listed in the Committee's FEC filings. According to the USDC, these published materials are evidence that the campaign committee failed to accurately report expenditures, contributions and/or loans and failed to disclose the acceptance of illegal contributions or loans from the two named vendors.

The Committee denies the veracity of the press release and the news article used as the primary basis for the USDC's complaint. The respondents also dispute the allegations of faulty reporting and acceptance of prohibited contributions.[3]

The respondents go to great lengths to refute the charges made with regard to Nielson. Included in the response package were: a copy of the standard form contract provided by Nielson and signed by both parties on March 5, 1996; copies of selected FEC filings; copies of some invoices; memoranda; correspondence; a document entitled Settlement Agreement and Agreement for Services; and the Stipulation of Dismissal without Prejudice stemming from the suit filed against the Committee by Nielson. The

[3] The Committee initially attempts to argue that the USDC's complaint is insufficient to trigger Commission action because the document was not signed and sworn under the pains and penalties of perjury. However, this complaint did in fact conform with FEC regulations as it was sworn to and signed before a notary. 11 C.F.R. § 111.4(2).

respondents contend that they were in conformance with the written contract that specifically delineated each party's rights and obligations.

In its response the Committee basically presents a scenario in which there was a breakdown of the business relationship between the campaign and Nielson resulting in a "garden variety billing dispute" over the amount of money owed to the campaign management firm. It is the respondents' position that the consultant breached the service contract in a material way, specifically through a failure to perform its duties in an adequate manner and through grossly overbilling the campaign.

The respondents assert that it was only after the November election that they became aware that there was an outstanding balance on the Nielson account. The Committee states in the response that it was the vendor who informed the campaign that the debt existed and was the source of the $37,441.66 figure appearing in the 'debt incurred this period' column on the Form 3 Schedule D of the 1996 30 Day Post-election Report. Following the filing of this report and prior to the Committee's amendment of same wherein the existence of a disputed debt was revealed, Nielson apparently made several attempts to negotiate an agreement on the balance owed for amounts that were significantly larger than that disclosed in the above-referenced report. Correspondence dating from December 1996 and a document entitled Settlement Agreement and Agreement for Services, which the Committee included in its response, show that the consulting firm was claiming amounts ranging from $96,689.54 to $173,132.87. According to the Committee, Nielson's demands for payment were wildly escalating during this period and the amendment and subsequent disclosure reports accurately

reflected the development of a debt dispute between the two. An amended 1996 30 Day Post-election Report, along with a cover letter dated January 31, 1997, did reveal that the Committee's obligation to Nielson was in dispute and had in fact become the subject of a lawsuit.[4] The amended Form 3, Schedule D showed that the debt, which had previously been reported as $37,441.66, stood by their calculations at $7,128.32. The vendor, per the report, was claiming a debt of $176,182.86. The only changes in the Cook Committee's subsequent disclosure filings have been in the amounts claimed by each party. In the 1996 Year End disclosure report, Nielson is said to be claiming $179,362.17. Beginning with the 1997 Mid-Year Report, the Committee provides the additional information that, based on a professional legal accounting, Nielson in fact owes the campaign $5,783.33. It is the respondents' position that they cannot be accused of violating FECA given their compliance with the disputed debt reporting standard set out in 11 C.F.R. § 116.10.

The Commission possesses a declaration signed by Ron T. Nielson in which he agrees with certain of the allegations made in the complaint. According to the consultant, the respondents did indeed fail to correctly report the magnitude of their indebtedness as required by law. Mr. Nielson asserts, as was reflected in the January 24, 1997 press release and the Deseret News article, that the Cook campaign owes it in excess of $200,000. A portion of the debt is alleged to have been outstanding for seven months. In this declaration, Nielson denies that any discrepancies between what he asserts is actually

[4] The suit filed by Nielson was dismissed without prejudice on February 12, 1997. A possible mediation of the dispute mentioned in the response never took place. And, although Nielson proposed in writing that the two settle their dispute, based on the campaign's disclosure forms, this has never come to pass.

owed and the amounts appearing on Cook's FEC disclosure reports constitute illegal loans or corporate contributions.

With respect to PTS, the respondents claim to have accurately and completely disclosed all debts and disbursements. To support this contention, copies of the relevant FEC Form 3 Schedule Bs and Schedule Ds as well as an executed Memorandum of Understanding and Agreement were enclosed with the response. As of the 1996 30 Day Post-election Report, filed on December 4, 1996, the Cook Committee reported that it was $6,583.99 in debt to PTS for T.V. production services.[5] The amended report, filed with the Commission on January 31, 1997, states that this debt was in fact $13,006.65 with the cover letter specifying that the amount was not in dispute. A payment of $4,012.56 was made to PTS on December 19, 1996, as reflected on the 1996 Year End Report. According to the Committee's 1997 Mid-year filing, the remainder of this debt was extinguished with a payment of $8,994.09. There was no narrative supplied on the Form D to describe the circumstances under which the debt was paid off. According to the response, this payment was in fact the result of a "...settlement agreement resolving the billing dispute wherein respondent agreed to pay PTS the outstanding balance of the debt..." This agreement was memorialized in a Memorandum of Understanding and Agreement which was signed by both parties on January 30, 1997. This document stipulated that the sum of $8994.09 represented payment in full for all services performed by the advertising agency and any of its subcontractors. The respondents' position

[5] Prior to this the Committee had reported a debt of $10,000 incurred during the 1996 October Quarterly reporting period (7/1/96-9/31/96), which debt was paid off during the 12 Day Pre-general Reporting period (10/1/96-10/16/96).

appears to be with respect to this vendor that the debt was paid and therefore no violation of FECA can be said to have occurred.[6]

The Commission is in possession of a declaration in which one of the agency's principals, Ted Phillips, denies that the firm has ever made, or intended to make, any contributions or loans to the Cook Campaign. According to the vendor, the actions that are viewed by the complainant as leading to an illegal corporate contribution in truth reflected a deteriorating business relationship resulting in a run of the mill fee dispute which was resolved through a negotiated settlement.

As stated previously, the Committee hired PTS sometime in March 1996 on an as needed basis to provide advertising services. The agency's responsibilities during the 1996 campaign included the creation, development, production and placement of both print and electronic media. The materials assembled by the Commission thus far indicate that at some point in the winter of 1996, the business relationship disintegrated. According to the aforementioned declaration, on or about December 15, 1996, PTS informed the Cook campaign that "...taking into consideration all of the payments Cook had previously made, Cook owed PTS an additional $16,689.18 for services rendered." It is also asserted in this document that the Committee had become dissatisfied with PTS' services and so sent the firm a letter (dated December 18, 1996) in which it proposed that the account be settled with the $4,012.56 check enclosed therein. The letter apparently outlined claims by the Committee that the agency had overcharged for services and that

[6] Apart from the aforementioned disclosure documents and Memorandum of Understanding and Agreement, the Cook Committee did not provide any other materials relative to the specifics of the evolution of this debt and settlement, such as invoices, checks, billing statements or correspondence.

certain of those services were not rendered in a timely manner or performed as agreed. PTS, finding the allegations had no validity, did not accept the check as a final settlement, but instead applied it to the outstanding balance. With that payment the balance stood, according to Mr. Phillips, at $12,676.62. The available information indicates that sometime thereafter the parties got together to work out their differences. The result was that on January 30, 1997, the parties signed an agreement whereby the Cook campaign would tender a check for $8994.09, which amount would be taken as payment in full for all services rendered. In his declaration, Mr. Phillips states that both parties recognized that the other had raised "colorable claims" during the negotiations. Thus, according to PTS any difference between the amount paid and the amount that the firm originally claimed was owed represented nothing more than "...a negotiated compromise that took into consideration the various matters and claims raised" by the two.

C. **Analysis**

**1. The Respondents and the R.T. Nielson Company**

The materials available thus far indicate that the Committee and Nielson have been, and continue to be, involved in a dispute stemming from the 1996 election campaign, specifically over services rendered, invoices paid and moneys owed. The issue now before the Commission is whether the Cook campaign reported all of its expenditures as well as any disputed debts in a timely and appropriate manner. Many questions remain about the respondents' reporting practices due to deficiencies in the

supporting documentation and the nature of the dispute between the two parties.[7] Nonetheless, the information obtained to date appears to indicate that the Committee was not making certain expenditure related disclosures in accordance with the applicable regulations.

An examination of the material assembled thus far suggests that certain of the obligations assumed by the campaign and delineated in the written contract were not appropriately recorded in the financial disclosure reports. For instance, according to the service contract, which was signed on March 5, 1996, the Committee was responsible for paying "$40,000 for general contracting services through May 4, 1996. After May 4, 1996 and during the periods of the primary and general elections Nielson shall receive $4000 a month for general consulting." Bonuses of varying amounts were to be awarded for Merrill Cook's success in the May 4, 1996 Republican Convention ($5,000), the June Republican Primary ($5,000) and the November General Election ($25,000). Pursuant to 11 C.F.R. § 100.8(a)(2) & 104.11(b), it appears that the initial contracting fee should have either been paid during the time period encompassed by the First Quarterly Report (1/1/96 - 3/31/96) and reported as an expenditure or disclosed as a debt on the Summary Page and on a Schedule D. The report submitted by the campaign recorded disbursements for campaign management to the R.T. Nielson Company totaling $20,000.

[7] Only 21 out of 50 R.T. Nielson Company invoices were provided by the Committee. None of the ones provided were dated after October 16, 1996 although the Commission is in possession of the Nielson billing statement which indicates that 9 additional invoices were sent after that date.

The information furnished thus far appears to support the Committee's contention that there were significant problems with the vendor's billing practices. One obvious example of this is that while the service contract called for a bonus of $5000 to be awarded upon the candidate's victory in the Republican primary, two invoices were in fact issued, one for $5000 (#96172) and one for $50,000 (#96199). Despite the inaccurate and inflated second bill, they were both paid. This type of activity makes it difficult to determine which items were legitimately reportable as expenditures.

Nowhere in the disclosure report was there any indication that moneys were owed to this vendor. As it appears under the contract that there was a balance on the account of at least $20,000, this should have been reflected as a debt incurred during that period. According to the regulations, such an obligation should have been continually accounted for under the categories of disbursements and/or debt until the full amount was paid off.

The contract appears to make the candidate's obligation to pay monthly consulting fees contingent upon his success in the Republican Convention and then in the Republican Primary. Expenditures were not incurred and therefore not reportable until these contingencies actually arose. This candidate was successful at the convention and then did go on to win the primary. Thus, it appears that the Committee was obliged to report as an expenditure one monthly consulting fee and a convention bonus of $5,000 in the 12 Day Pre-primary Report. Once the candidate won the primary on June 25, 1996, it appears that his Committee should also have disclosed on the July Quarterly Report, either as paid or as a debt, the $5,000 primary bonus and the remaining consulting fees. It also appears that whatever amounts remained outstanding at the close of this reporting period should have been continuously reported until they were paid off. The contract also appears to dictate that once the candidate was elected to office a final bonus of $25,000 was earned. Such a bonus was reportable during the time period encompassed by the 30 Day Post-election Report. It is unclear whether this bonus amount was included in the original disclosure form's Schedule D, which reports an incurred debt of $37,441.66. The information available appears to indicate that there is a discrepancy between when certain of these obligations were incurred and when they were reported. The campaign

reports moneys disbursed for campaign management in each of the relevant periodic disclosure documents filed up to and including the original 30 Day Post-election Report, but these sums are not clearly identified, do not seem to match the amounts agreed to in the contract, or conform to the reporting schedule dictated by the regulations. In addition, there is no identification in any of the disclosure reports of any expenditures made for the series of bonuses owed R.T. Nielson during the course of the campaign. The specific issue of reporting expenditures when incurred is not addressed by the Committee in its response.

The information that appears to reflect that the Cook Committee failed to report its contractually based expenditures on a timely basis is consistent with other instances where there may have been inaccurate reporting. The Nielson billing statement appears to show that a debt to the vendor had been accumulating over the entire course of this business relationship. The statement, which was directed to the attention of the treasurer, Avis Lewis, reflects an ongoing debt of fluctuating amounts as early as the time period reflected in the 1996 First Quarterly Report.[8] This document tends to demonstrate that the Committee should either have been reporting additional expenditures to the R.T. Nielson Company throughout 1996, or it should have been reporting the existence of a

[8] According to the R.T. Nielson billing statement, dated January 24, 1997, the following amounts remained outstanding at the end of each reporting period:

1996 First Quarterly Report (1/1/96-1/31/96) - $29,000
1996 12 Day Convention Report (4/1/96-4/14/96) - $8,000
1996 Pre-primary Report (4/15/96-6/5/96) - $12,000
1996 July Quarterly Report (6/6/96-6/30/96) - $30,384.31
1996 October Quarterly Report (7/1/96-9/30/96) - $151,455.31
1996 Pre-general Report (10/1/96-10/16/96) - $128,538.62
1996 30 Day Post-election Report (10/16/96-11/25/96) - $176,182.86
1996 Year End Report (11/26/96-12/31/96) - $179,362.17

gradually increasing disputed debt that rose to the figure of $179,362.17. Although the figures set out in the Nielson billing statement do not actually indicate when any such reporting obligations arose, certainly this information appears to make the disputed debt issue one that requires further investigation. If there were indeed billing disputes between the campaign and the vendor prior to the election, then their existence should have been disclosed on the appropriate forms. Additional questions should be posed to the respondents to try and determine the true pattern of the campaign's expenditures and assumption of debt throughout the 1996 election cycle.

Beginning with the filing of the January 31, 1997 amendment to the 1996 30 Day Post-election Report, it appears that the Committee acted in conformance with the regulations by reporting the existence and nature of the disputed debt with the management consulting firm.[9] However, as stated above, there are indications that in fact the Cook campaign's indebtedness to the R.T. Nielson Company arose much earlier than is reflected in those reports. The contract signed by the parties, the Nielson billing statement, the disclosure records and, to a lesser degree, the invoices seem to indicate that obligations were incurred and services rendered throughout most of the 1996 electoral cycle without being reported appropriately as itemized disbursements or debts.

None of the disclosure documents or other materials assembled in this matter support the complainant's assertion that these respondents violated 2 U.S.C.

[9] According to the Committee's disclosure reports, Nielsen has claimed a balance on the account of either $176,182.86 or $179,362.17. As stated previously, Nielson has asserted that the debt is in excess of $200,00. While it therefore may be said that the Committee under-reported the amount of the Nielson debt by over $20,000, the fact that the disputed amounts are relatively de-minimus and the figures were apparently derived from documents generated by Nielson argues against treating these particular filing deficiencies as violations of 2 U.S.C. § 434(b).

§ 441b(a). While it does appear that the respondent committee was not performing its disclosure responsibilities in an appropriate manner, there are no indications that Nielson proffered or that the campaign accepted any prohibited corporate contributions.

Based on the foregoing information, the Commission has found reason to believe that, with respect to the first six filing periods of the 1996 campaign, the Cook 98 Re-election Committee and Avis Lewis, as treasurer, may have violated 2 U.S.C. § 434(b) by failing to report its level of expenditures and disputed debts in a timely and appropriate manner.[10] In addition, the Commission has found no reason to believe that the Cook 98 Re-election Committee and Avis Lewis, as treasurer, violated 2 U.S.C. § 441(b) with respect to their dealings with the R.T. Nielson Company during the 1996 campaign.



**2. The Respondents and Phillips, Twede & Spencer, Inc.**

The respondent committee is, and was during the relevant time period, an ongoing political committee. On December 10, 1996, the Federal Election Commission received from the Committee its 1996 30 Day Post Election Report (10/17/96 - 11/25/96). This filing revealed a $3,000.00 disbursement to PTS as well as a debt to the firm in the amount of $6,583.99 for television production. This debt was reported to have been incurred during that reporting period. On January 31, 1997, the Committee filed both an amended 1996 30 Day Post Election Report as well as its 1996 Year End Report (11/26/96 - 12/31/96). The cover letter to the amended filing stated that the Committee

[10] These six time periods include: the First Quarterly Report (1/1/96-3/31/96); the 12 Day Pre-convention Report (4/1/96-4/14/96); the 12 Day Pre-primary Report (4/15/96-6/5/96); the July Quarterly Report (6/6/96-7/30/96); the October Quarterly Report (7/31/96-9/30/96) and the 12 Day Pre-general Report (10/1/96-10/16/96).

was reporting a change in the amount of its debt to PTS.[11] This new debt figure was $13,006.65. According to the cover letter, which was signed by the treasurer, there "...was no difference in the amount Phillips Twede Spencer is claiming and the campaign amount." The 1996 Year End Report showed that the beginning balance for this debt was $13,006.65 with one payment of $4012.56 having been made during that reporting period. The ending balance was reported to be $8994.09. According to the Committee's next filing, the 1997 Mid-year Report (1/1/97 - 6/20/97), the debt to the advertising agency was extinguished with a final payment of $8994.09 made on January 30, 1997. On their face the above-referenced reports seem to indicate that the Committee assumed a debt in the amount of $13,006.65 at some point during the 1996 30 Day Post-election period, which obligation was fully paid off in two installments as reflected in the next two disclosure reports.

However, the available materials suggest instead that the debt was the subject of a dispute between the two that was not officially resolved until the signing of the previously mentioned Memorandum of Agreement and Understanding on January 30, 1997. Ted Phillips states in his declaration that on or about December 15, 1996, he informed the Committee that "...taking into consideration all of the payments Cook had previously made, Cook owed PTS an additional $16,689.18 for services rendered." According to the agency, the $4012.96 payment made on December 19, 1996 decreased

[11] It should be noted that as of the date that this letter was signed, January 31, 1997, the two parties had in fact agreed that two payments equaling $13,006.65 would satisfy the debt owed by the Committee. However, there is reason to doubt, as outlined in this section, that during the actual reporting period (11/26/97 - 12/31/97) the parties were in agreement as to amount of the money owed to PTS by the campaign.

the balance to $12,676.82. It was apparently sometime thereafter that the parties engaged in what may be described as serious and protracted negotiations resulting in an agreement that the amount of $8994.09 would serve "as payment in full for all services rendered by PTS." The agreement was signed and the money paid on January 30, 1997. Therefore, it appears that a dispute regarding the amount of money owed to the consultant almost certainly existed during and after the time period encompassed by 1996 Year End Report.[12] In this disclosure document, the Committee cited a beginning balance of $13,006.65 with the December 19, 1996 payment of $4012.56 reducing the amount owed to $8994.09, while the firm was claiming that the obligation was only reduced to $12,676.82 with the aforementioned payment. It appears that the existence of this disputed debt should have been recorded at least on the 1996 Year End report. The information assembled thus far make it clear that this dispute was not resolved until almost one month into the 1997 Mid-year reporting period. It also appears that this later report should have cited the continued existence of the debt and the circumstances under which it was finally extinguished on January 30, 1997.

There is no evidence in any of the available materials to suggest that PTS made a corporate contribution to the Cook Committee nor that the Committee in turn accepted any illegal contributions from the advertising agency. The facts suggest that the

[12] It is not possible to state whether the debt was in fact incurred prior to this time period given the paucity of information regarding when the parties agreed that the agency would perform the services underlying this debt. Although the 1996 30 Day Post-election report does state that the debt was incurred during that same time period, this may in fact not be accurate given the evidence suggesting that the Committee routinely failed to report expenditures to another vendor, the R.T. Nielson Company, in a timely and appropriate manner. If the debt, and indeed the billing dispute with PTS, arose prior to the time period encompassed by the 1996 30 Day Post-election report then these items should have been disclosed on the appropriate forms. Additional questions should therefore be posed to the Committee in order to determine when the campaign actually assumed this debt.

Committee came to doubt the quality and value of the services rendered by the advertising agency, which included such non-fungible items as conceiving television and radio ads. As stated earlier in this section, the two parties were disputing the value of said services. Sometime after the December payment of $4012.56, the parties engaged in serious negotiations aimed at agreeing on the true value of the services rendered and the legitimate amount of the debt incurred by the Committee. Both parties agreed to settle their differences and apparently valued the outstanding bills for the advertising services at $8994.09. With the signed agreement the Committee tendered a check to PTS for that amount. Given that the Committee paid the creditor the full amount of the agreed upon debt it cannot be said that any difference between what the parties originally claimed was owed on this account constituted the acceptance of a corporate contribution, and therefore a violation the Federal Election Campaign Act of 1971, as amended, namely the acceptance of a corporate contribution.

Based on the information outlined above, the Commission has found reason to believe that the Cook 98 Re-election Committee and its treasurer, Avis Lewis, may have violated 2 U.S.C. § 434(b) by failing to appropriately report the existence of a disputed debt and the settlement of same with Phillips, Twede & Spencer, Inc. With respect to this vendor, the Commission has found no reason to believe that the Cook 98 Re-election Committee and Avis Lewis, as treasurer, violated 2 U.S.C. § 441b(a) as a result of activities engaged in during the 1996 campaign.

## III. CONCLUSION

As mentioned previously, the respondents submitted a response in which they denied that the Cook campaign had violated the Federal Election Campaign Act of 1971, as amended, during the 1996 campaign as alleged in the USDC's complaint. Notwithstanding the respondents' denials, the Commission has found to find reason to believe that the 98 Cook Re-election committee and Avis Lewis, as treasurer, may have violated 2 U.S.C. § 434(b) by failing to accurately report its level of expenditures and disputed debts resulting from the Committee's dealings with the R.T. Nielson Company during the 1996 campaign. Also, with respect to this vendor, the Commission has found no reason to believe that the respondents violated 2 U.S.C. § 441b(a). The Commission has found reason to believe that the respondents may have violated 2 U.S.C. § 434(b) by failing to appropriately report the existence of a disputed debt and the settlement of same with Phillips, Twede & Spencer, Inc. The Commission has found no reason to believe that the Committee or the treasurer violated 2 U.S.C. § 441b(a) with respect to their dealings with Phillips, Twede & Spencer, Inc. during the 1996 campaign.