



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 9, 2001

Representative Merrill Cook  
Cook Associates, Inc.  
631 16<sup>th</sup> Avenue  
Salt Lake City, Utah 84103

RE: MUR: 4621

Dear Mr. Cook:

On January 3, 2001, the Federal Election Commission found that there is reason to believe that you and Cook Associates, Inc. violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("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 your 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 order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such

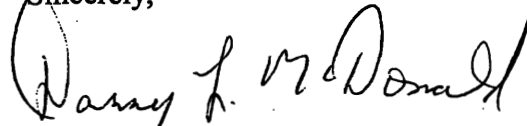
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counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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 investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1596.

Sincerely,

A handwritten signature in dark ink, appearing to read "Danny L. McDonald". The signature is fluid and cursive, with the first name "Danny" and last name "McDonald" clearly distinguishable.

Danny L. McDonald  
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Conciliation Agreement

Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Representative Merrill A. Cook,  
and Cook Associates, Inc.

MUR: 4621

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Mike Zuhl, as chairman of the Utah State Democratic Committee, *see* 2 U.S.C. § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

**II. FACTUAL AND LEGAL ANALYSIS**

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any corporation from making any expenditure or contribution, directly or indirectly, in connection with a Federal election, and prohibits their officers and/or directors from consenting to such activities. 2 U.S.C. § 441b.

According to the Commission's regulations, corporate employees are entitled to volunteer for a campaign and even, within certain limits, perform some limited services on company time and on company property. For example, employees of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity that does not exceed one hour per week or four hours per month and which does not interfere with the organization's normal activities. Such employees are required to reimburse the corporation only to the extent that their activities increase the overhead

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or operating costs of the corporation. 11 C.F.R. § 114.9(a)(1). When an individual goes beyond "incidental use" of corporate facilities to benefit a candidate or political committee, that employee is required to reimburse the corporation for the use of those facilities at the normal and reasonable rental rate. Such reimbursements must be made within a commercially reasonable time. 11 C.F.R. §§ 114.9(a)(2). Any corporation that permits its employee's political activities to exceed the limited safe harbors afforded by the Act is considered to have violated 2 U.S.C. § 441b.

Avis Lewis, who served as the treasurer for the Cook for Congress Committee in 1996,<sup>1</sup> has been an employee of Cook Associates, Inc. since the mid-1980's. The Cook Slurry Company is the name under which Cook Associates, Inc. does business.<sup>2</sup> During the relevant time period, Ms. Lewis' position at the company was that of secretary and office bookkeeper. Ms. Lewis testified in a deposition taken in a civil suit filed by the R.T. Nielson Company against the Committee, that she performed her duties as treasurer on company time, while on company premises, utilizing company resources, including Cook Slurry ledgers and other accounting materials.<sup>3</sup> Mr. Cook, who up until at least the end of the summer was campaigning out of the corporate office, has testified that he was aware that Ms. Lewis was performing her duties as treasurer from the Cook Slurry

<sup>1</sup> In March of 1997, Cook for Congress, Merrill A. Cook's principal campaign committee, notified the Federal Election Commission ("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. In March of 1999, the Committee filed an amendment to its Statement of Organization notifying the Commission that it had changed its name from the Cook 98 Re-election Committee to the Cook 2000 Re-election Committee. Notice was received in June of 1999 that Camille Cook was replacing Avis Lewis as the Committee's treasurer.

<sup>2</sup> According to Dun & Bradstreet, Inc., Cook Associates, Inc. was started in 1973 and 100% of its capital stock is owned by Merrill Cook. Avis Lewis serves as corporate secretary. See also, Jennifer K. Nii, *Salaries are Relative*, Deseret News, 9/19/99, at A01, 1999 WL 26533743. Mr. Cook served as the company's President from its inception until he was sworn into Congress in January of 1997.

<sup>3</sup> The deposition transcripts of Merrill A. Cook, Avis Lewis and Ron Nielson, which were taken as part of the civil suit referenced above, were reviewed as a part of the investigation of this matter.

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headquarters. He testified that, while at work, she engaged in such campaign related activities as maintaining records, handling campaign accounts and making payments to vendors. The treasurer admitted that she spent an average of one or two days a week on her Committee responsibilities, which far exceeded the 1 hour per week, 4 hours per month limitation allowed by the regulations. (Lewis dep. at Vol. I, pgs 28-30; Cook dep. at Vol. I, pgs 30,72,75, 124; Vol II. Pgs 246-248) Avis Lewis' use of company facilities and resources in performing her treasurer duties for the campaign went well beyond "incidental use." Representative Merrill A. Cook, as her direct employer and as a corporate officer, was aware of Ms. Lewis' level of activity and permitted her use of corporate assets on behalf of the campaign. There is no indication in any of the assembled materials that Cook Associates, Inc. sought reimbursement for the use of its resources for the benefit of the campaign.

There was additional testimony that another Cook Slurry employee, Brett Jackman, on the instructions of Merrill A. Cook, set up, took down, transported and stored campaign signs. According to the evidence, these signs eventually ended up at a company owned plant located in Lehi, Utah. Mr. Jackman, who was not a volunteer, performed these activities on company time utilizing company assets, including a Cook Slurry truck. (Nielson dep. at Vol II, pgs 45-50; Lewis dep. at Vol. II, 268-272) Based on this fact pattern, it is clear that Representative Merrill A. Cook, who was Mr. Jackman's employer as well as a corporate officer, was aware of, and consented to, the use of these corporate assets for the benefit of his 1996 congressional campaign. There is no indication in any of the evidence that the Cook Associates, Inc. ever sought reimbursement from the Cook Committee for these uses of its personnel and resources.

Therefore, there is reason to believe that Representative Merrill A. Cook and  
Cook Associates, Inc. violated 2 U.S.C. § 441b.

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