FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 466

FEDERAL ELECTION COMMISSION

December [illegible], 1977 [illegible] letter found to be [illegible]

December [illegible], 1977 [illegible] letter found to be [illegible]

January 6, 1978 [illegible] acknowledging [illegible]

[illegible] as above.

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

____ (1) Classified Information

____ (2) Internal rules and practices

____ (3) Exempted by other statute

____ (4) Trade secrets and commercial or financial information

____ (5) Internal Documents

____ (6) Personal privacy

____ (7) Investigatory files

____ (8) Banking Information

____ (9) Well Information (geographic or geophysical)

Signed [illegible]

date 1/[illegible]/78

FEC 9-21-77

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Evans for Congress Committee, David W. Evans, Mr. Tim Miller	)))))	MUR 466 (77)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on January 4, 1978, the Commission determined by a vote of 4-0 to find no reason to believe that there has been a violation of the Act within the Commission's jurisdiction in the above-captioned matter, and that the matter not be referred to the Department of Justice in view of the Department's previous positions with regard to similar situations.

Voting for this determination were Commissioners Aikens, Harris, Staebler, and Thomson. Commissioners Springer and Tiernan were not present at the time of the vote.

Accordingly, the file in this case has been closed.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

DECEMBER 20, 1977

5:00 p.m.

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE EMMONS mwe

RE: MUR 466 (77)

This memorandum SUPERCEDES the earlier one sent to you at 4:15 p.m. this date: on the above-captioned matter.

At 4:45 p.m. today, Commissioner Tiernan submitted an OBJECTION to the recommendations in the General Counsel's Report in MUR 466 (77), thereby placing this matter on the agenda.

Please withdraw the Certification issued by me earlier today based on the earlier memorandum.

December 16, 1977

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 466

Please have the attached 7 Day Report distributed to the Commission on a 24 hour no-objection basis.

Thank you.

FEDERAL ELECTION COMMISSION
1325 K Street N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION ________

MUR NO. 466(77)
DATE COMPLAINT RECEIVED
BY OGC ________

ATTORNEY Weissenborn

COMPLAINANT'S NAME:

RESPONDENT'S NAME: Evans for Congress Committee
David W. Evans
Mr. Tim Miller

RELEVANT STATUTE:

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Mr. Tim Miller, administrative assistant to Congressman David W. Evans, was one of three guarantors of a $2,000 loan obtained by the Evans for Congress Committee on December 13, 1976. Information concerning the loan and its guarantors came to the attention of the Audit Division in the Committee's August 1977 amendments to its earlier reports of receipts and debts and obligations. See Attachment I.

PRELIMINARY LEGAL ANALYSIS

In a memorandum to the General Counsel dated November 7, 1977, the Audit Division stated that during the audit of the Evans for Congress Committee ("the Committee"), it was learned that the Committee had negotiated a loan agreement and promissory note with the Indiana National Bank for $2,000. The loan was finalized on December 13, 1976, and repaid in full on January 30, 1977. There were three guarantors to the promissory note: David W. Evans, the candidate and newly re-elected U.S. Representative; the Committee treasurer; and Mr. Tim Miller, Congressman Evans' administrative assistant. According to the 1976 Congressional Staff Directory, Mr. Miller was the administrative assistant as early as March, 1976. The loan was apparently used for post-election debt retirement.

I. Possible Violation of 18 U.S.C. §602

18 U.S.C. §591 states:

> Except as otherwise specifically provided, when used in this section and in sections. . . 599, 600 and 602, of this title --
>
> (e) "contribution" --
>
> (1) means a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank . . .which shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance thereof that each endorser or guarantor bears to the total number of endorsers or guarantors), made for the purpose of influencing the nomination for election, or election, of any person to Federal office. . ." (Emphasis added.)

18 U.S.C. §602 states:

> "Whoever, being a Senator or Representative, . . . or individual elected as, Senator [or] Representative,. . . or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5000 or imprisoned not more than 3 years, or both." (Emphasis added.)

In 1974 the Assistant Attorney General, Criminal Division, Department of Justice, issued two "informal" responses to inquiries from Representative Donald J. Mitchell and Mr. Drew Mason, Administrative Assistant to Senator Henry Bellmon, concerning the possible illegality of contributions made by Federal employees (including members of a U.S. Representative's district staff) to a campaign committee supporting an incumbent Congressional candidate (See Attachment II). In these responses the Department may have been relying upon cases such as United Public Workers v. Mitchell, 330 U.S. 75 (1947), and CSC v. National Association of Letter Carriers, 413 U.S. 548 (1973), in which the Court discussed the need for striking a balance between guarantees of political freedom and the interests of government in protecting society from political corruption. After quoting in part from 18 U.S.C. §602, the Assistant Attorney General stated in his letter to Representative Mitchell:

> "Although the language of Section 602 may appear to prohibit the receipt of a contribution made by a member of your district staff, we would not view such a receipt as a prosecutable violation of the Section where the contribution is completely voluntary in nature and where it is received by a political committee, which is staffed solely with non-government personnel, in the normal course of its operation.
>
> You should be aware, however, that the existence of the employer-employee relationship between a Congressman and members of his staff could, in some circumstances, give rise to an inference of coercion." (Emphasis added.)(See Attachment II)

Virtually identical language concerning §602 was used in the letter to Mr. Mason. (See Attachment III)

Applying §591(e), §602, and the Justice Department enforcement criteria to the facts here, it seems that although the guaranty of the promissory note constitutes a contribution to the Committee, the Department of Justice would determine that no prosecutable violation occurred if the Committee was staffed solely by non-government personnel. We believe that our information does not warrant referral of a possible violation of §602 to the Department of Justice.

II. Possible Violation of 18 U.S.C. §607

18 U.S.C. §607 states:

> "Whoever, being an officer, clerk, or other person in the service of the United States . . . directly or indirectly gives or hands over. . . to any Senator or Member of . . . Congress . . . any money or other valuable thing on account of or to be applied to the promotion of any political

object, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both."

In the 1974 letter to Mr. Drew Mason, the Assistant Attorney General wrote:

> "As you will note, the language of Section 607 appears to prohibit the making of a political contribution by a Federal employee to a fund-raising or campaign committee supporting an incumbent candidate for Congress. However, we would not view such a contribution as a prosecutable violation of Section 607 where it is received by a political committee in the normal course of its operation and where the facts and circumstances surrounding its making suggest that it was not the donor's intent to accomplish any corrupt purpose thereby." (Empahasis added.)

Here, it appears that the contribution was indeed "received by a political committee in the normal course of its operation." Although Mr. Miller did indirectly "give . . . [a] valuable thing" to Representative Evans, there is no evidence of any "corrupt purpose" on the part of Mr. Miller. We believe that our information does not warrant referral of a possible violation of §607 to the Department of Justice.

III. Possible Violations of 18 U.S.C. §§599 and 600

18 U.S.C. §599 states:

> "Whoever, being a candidate, directly or indirectly promises or pledges the appointment . . . of any person to any public or

> private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than 1 year or both . . . " (Emphasis added.)

18 U.S.C. §600, as amended in 1976, reads:

> "Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress . . . to any person as consideration, favor or reward for any political activity . . . in connection with any general or special election to any political office . . . shall be fined not more than $10,000 or imprisoned not more than one year, or both." (Emphasis added.)

Mr. Miller began serving as Mr. Evans' administrative assistant as early as March 1976. Therefore, it is highly unlikely that Mr. Miller received his appointment as a quid pro quo for his guaranty of the promissory note. Also, there is no evidence of a promise of employment "as consideration . . . for any political activity . . . in connection with any . . . election," as prohibited by §600. We believe that there is no evidence tending to indicate a violation of §599 and §600 which would warrant referral to the Department of Justice.

RECOMMENDATION

Find no reason to believe that there has been a violation of the Act within the Commission's jurisdiction. We recommend that the matter not be referred to the Department of Justice in view of the Department's previous positions with regard to similar situations.

Attachment I

MUR 466(77) A·82

#345

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 7, 1977

MEMORANDUM

TO: BILL OLDAKER
GENERAL COUNSEL

THRU: ORLANDO POTTER B.L. for O.B.P.
STAFF DIRECTOR

FROM: RC BOB COSTA/TOM HASELHORST TH

SUBJECT: Possible Violation of 18 USC 599, 600, 602 and/or 607.

During the audit of the Evans for Congress Committee it was determined that the Committee obtained a loan from the Indiana National Bank on December 13, 1976 in the amount of $2,000. This loan was guaranteed by the Candidate, his treasurer and Mr. Tim Miller who was identified as a member of the Congressman's staff. The "Clerks Report" of June 30, 1977 lists Mr. Miller as the A.A. of the Congressman. The loan was repaid by the committee on January 20, 1977.

This information indicates a possible violation of one or more of the above cites and is therefore being passed along to you in accordance with the Commission's guidance of November 3, 1977. If you have any questions please contact Tom Haselhorst at 34155.

ATTACHMENT II

RETYPED BY FEC
12/8/77

T. 2/28/74

HEP:TJM:WCH:sld

Honorable Donald J. Mitchell
House of Representatives
Washington, D.C.

Dear Congressman:

This is in response to your letter dated February 14, 1974, regarding the applicability of Federal election laws to the making and receipt of unsolicited contributions to the Friends of Don Mitchell by members of your district staff. Your letter indicates that all of those associated with the "Friends" are "volunteers from the private sector".

As you know, the Department of Justice is authorized to render legal formal opinions only to the President and to the heads of Executive Departments of Government. Therefore, I can only respond informally to your inquiry.

Section 602 of Title 18, United States Code provides criminal penalties, inter alia, for any "Representative in Congress" who "directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any ... contribution for any political purpose" from a "person receiving any salary or compensation for services from money derived from the Treasury of the United States". Although the language of Section 602 may appear to prohibit the receipt of a contribution made by a member of your district staff, we would not view such a receipt as a prosecutable violation of the Section where the contribution is completely voluntary in nature and where it is received by a political committee, which is staffed solely with non-government personnel, in the normal course of its operation.

You should be aware, however, that the existence of the employer-employee relationship between a Congressman and members of his staff could, in some circumstances, give rise to an inference of coercion.

Section 607 of Title 18, prohibits, inter alia, any "person in the service of the United States" from directly or indirectly giving to any "Member of Congress" any money to be applied to the promotion of any political object. As was the case with Section 602, the language of Section 607 may appear to prohibit the making of a political contribution by a member of your staff. However, we would not view such

Records
Section Chron
Election Chron
Mr. Peterson
DAG
Mr. Hendricks

from a "person receiving any salary or compensation for services from money derived from the Treasury of the United States." As was the case with Section 607, the language of Section 602 may appear to prohibit the receipt of a contribution made by a Federal employee. However, we would not view such a receipt as a prosecutable violation of the Section where the contribution is completely voluntary in nature and where it is received by a political committee in the normal course of its operation.

You should be aware, however, that the existence of certain kinds of relationships between a Senator and a Federal employee-contributor-such as an employer-employee relationship may, in some circumstances, give rise to an inference of coercion.

I hope this information has been of assistance to you.

Sincerely,

HENRY B. PETERSEN
Assistant Attorney General
Criminal Division

By:

THOMAS J. McTIERNAN
Chief, Fraud Section

ATTACHMENT III

T.8/8/74

RETYPED BY FEC
12/8/77

EP:TJM:RAH:WCH:ald
72-017-60

Mr. Drew Mason
Administrative Assistant
to Senator Henry Bellmon
United States Senate
Washington, DC 20510

Dear Mr. Mason:

United States Attorney William H. Burkett has requested that we respond to your letter of July 16, 1974, in which you inquired as to whether Federal employees may make contributions to a campaign committee supporting an incumbent candidate for nomination and/or election to Congress.

The Department of Justice is authorized to render formal legal opinions only to the President and to the heads of Executive Departments of Government. Accordingly, we can only provide you with our informal views on this matter.

As you know, Section 607 prohibits, inter alia, any "person in the service of the United States" from directly or indirectly giving to any "Senator" any money to be "applied to the promotion of any political object." As you will note, the language of Section 607 appears to prohibit the making of a political contribution by a Federal employee to a fund-raising or campaign committee supporting an incumbent candidate for Congress. However, we would not view such a contribution as a prosecutable violation of Section 607 where it is received by a political committee in the normal course of its operation and where the facts and circumstances surrounding its making suggest that it was not its donor's intent to accomplish any corrupt purpose thereby.

In addition to Section 607, you should be aware of the provisions of Section 602 of Title 18, United States Code. Section 602, in relevant part, provides criminal penalties for any "Senator" who "directly or indirectly solicits or receives, or is in any manner concerned in soliciting or receiving, any . . . contribution for any promotion of any political purpose

Records
Section Chron
Election Chron
Mr. Hendricks (2)

a contribution as a prosecutable violation of Section 607 where it is received by a political committee, which is staffed solely with non-government personnel, in the normal course of its operation and where the facts and circumstances surrounding its making suggest that it was not its donor's intent to accomplish any corrupt purpose thereby.

I hope this information has been of assistance to you.

Sincerely,

Henry E. Peterson
Assistant Attorney General

MUR 466(77) A 82

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON D.C. 20463

November 7, 1977

MEMORANDUM

TO: BILL OLDAKER
GENERAL COUNSEL

THRU: ORLANDO POTTER B.L. for O.B.P.
STAFF DIRECTOR

FROM: BC BOB COSTA/TOM HASELHORST T

SUBJECT: Possible Violation of 18 USC 599, 600, 602 and/or 607.

During the audit of the Evans for Congress Committee it was determined that the Committee obtained a loan from the Indiana National Bank on December 13, 1976 in the amount of $2,000. This loan was guaranteed by the Candidate, his treasurer and Mr. Tim Miller who was identified as a member of the Congressman's staff. The "Clerks Report" of June 30, 1977 lists Mr. Miller as the A.A. of the Congressman. The loan was repaid by the committee on January 20, 1977.

This information indicates a possible violation of one or more of the above cites and is therefore being passed along to you in accordance with the Commission's guidance of November 3, 1977. If you have any questions please contact Tom Haselhorst at 34155.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 466