

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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4710

DATE COMPLAINT FILED: January 20, 1998

DATES OF NOTIFICATION: January 27, 1998;

February 2, 1998;

November 18, 1998¹

DATE ACTIVATED:

October 23, 1998

STAFF MEMBER: Lawrence L. Calvert Jr.

COMPLAINANTS: Tom Haughey
Tom Haughey for Congress

RESPONDENTS: Ruben Hinojosa for Congress
and Vickie L. Winpisinger, as treasurer²
Alonzo Cantu Construction, Inc.
and Alonzo Cantu, as an officer
Chase Bank of Texas, N.A. (f/k/a Texas Commerce Bank, N.A.)
Unidentified foreign nationals

RELEVANT STATUTES 2 U.S.C. § 434
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
2 U.S.C. § 441e(a)
2 U.S.C. § 441e(b)
11 C.F.R. § 103.3(b)
11 C.F.R. § 114.2(f)
11 C.F.R. § 114.9(a)
11 C.F.R. § 114.9(d)

¹ By letter dated January 27, 1998, this Office notified Ruben Hinojosa for Congress and Rey Jaquez, as treasurer, and Cantu Construction, Inc., of Fort Worth, Texas, of the complaint. The complaint was sent to Cantu Construction of Fort Worth in error, apparently because the complainant failed to completely identify the intended respondent, Alonzo Cantu Construction, Inc. of McAllen, Texas. Alonzo Cantu Construction was notified by letter dated February 2, 1998. Due to administrative oversight, Chase Bank of Texas, N.A. (f/k/a Texas Commerce Bank, N.A.) was not notified until November 18, 1998, after the matter had been activated.

² Rey Jaquez was treasurer of Ruben Hinojosa for Congress at the time of the events related in the complaint. On June 8, 1998, Ruben Hinojosa for Congress filed an amended Statement of Organization naming Vickie L. Winpisinger as treasurer.

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Federal Deposit Insurance Corporation

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Tom Haughey and his principal campaign committee, Tom Haughey for Congress. At the time of the complaint, Haughey was an unopposed candidate for his party's nomination for U.S. Representative from the 15th Congressional District of Texas. The incumbent representative, Rubén Hinojosa, whose principal campaign committee was named as a respondent in this matter, was likewise unopposed for his party's nomination for reelection.¹

The allegations in the complaint stem from a Rubén Hinojosa for Congress fund-raiser held at the McAllen, Texas home of Alonzo Cantu, president of Alonzo Cantu Construction, Inc., on January 9, 1998. President Clinton attended the fund-raiser. According to the complaint, the event raised \$480,000 for the Hinojosa Committee. The complaint alleges that at least two foreign nationals purchased tickets to the fund-raiser under "pressure" from employees of Texas Commerce Bank. It also alleges that Alonzo Cantu Construction, Inc. illegally facilitated the making of contributions by others to the Hinojosa Committee in connection with the fund-raiser.

¹ Hinojosa defeated Haughey in the November 3, 1998 general election by a margin of 59 percent to 41 percent.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

1. Foreign Nationals

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits the solicitation, making, and receipt of any campaign contribution from foreign nationals. 2 U.S.C. § 441e(a). Included in the Act's definition of a "foreign national" are, among others, noncitizens who are not lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20). Permanent resident aliens are not considered foreign nationals and are generally permitted to make contributions. 2 U.S.C. § 441e(b)(1) and (2); 22 U.S.C. § 611(b)(2).

Treasurers of political committees are responsible for *examining* all contributions received in order to ascertain their legality. 11 C.F.R. § 103.3(b). Contributions that present genuine questions as to whether they were made from prohibited sources, including contributions that may have been made by foreign nationals, may be, within ten days of receipt, either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If the treasurer opts to deposit such a contribution, the treasurer must make his or her best efforts to ascertain the legality of the contribution; at minimum, he or she must make at least one written or oral request for evidence that the contribution is legal. *Id.* If the contribution cannot be determined to be legal, the treasurer must refund the contribution within 30 days of receipt. *Id.* If the treasurer, at the time of receipt and deposit, determined that a contribution did not appear to come from a prohibited source, but later discovers new evidence not available at the time of receipt or deposit that the contribution was in fact illegal, the treasurer must refund the contribution to the contributor within 30 days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

2. Corporate Facilitation

In addition to prohibiting contributions by foreign nationals, the Act prohibits corporations from making contributions in connection with Federal elections, and prohibits national banks from making contributions in connection with election to any political office.

2 U.S.C. § 441b(a). Further, the Act prohibits any officer or director of any corporation or national bank from consenting to any such contribution, and prohibits any candidate, political committee, or other person from knowingly accepting or receiving any such contribution.

2 U.S.C. § 441b(a). As used in Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any office referred to in Section 441b. 2 U.S.C. § 441b(b)(2).

To effectuate this prohibition, corporations and national banks, including officers, directors, or other representatives acting as agents of corporations and national banks, are prohibited from facilitating the making of contributions to candidates or to political committees other than the corporation's separate segregated fund 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.*, see also 11 C.F.R. § 114.2(a)(2) (extending provisions of Part 114 of Title 11, Code of Federal Regulations, to activities of national banks in connection with Federal, state and local elections). Examples of facilitating the making of contributions include, but are not limited to, fundraising activities by corporations which involve 1) officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services; 2) failure to

reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture); 3) using a corporate list to solicit contributions in connection with a fundraiser, unless the corporation receives advance payment for the fair market value of the list; 4) using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or 5) providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting or delivering contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions, *see, e.g.* MUR 3672.

Notwithstanding these provisions, Commission regulations also contain certain safe harbors for the use of corporate resources in connection with Federal elections. For example, employees or shareholders of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity which does not exceed one hour per week or four hours per month, for individual volunteer activity in connection with a Federal election. Such employees or shareholders are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a).

B. Facts, Allegations, Responses, and Respondents

It is not disputed that on January 9, 1998, Rubén Hinojosa for Congress held a fundraising brunch at the home of Alonzo and Yolanda Cantu in McAllen, Texas, or that

President Clinton appeared at the brunch. A copy of an invitation to the fund-raiser and a reply card was attached to the Hinojosa Committee's response. MUR 4710, Response of Rubén Hinojosa for Congress at 6-7. Those who wished to attend the brunch were requested to contribute \$1,000 to the Hinojosa Committee. *Id.* at 7. The reply card further asked contributors to provide identifying information, including the identifying information the Hinojosa Committee was required to report to the Commission by 2 U.S.C. § 434, as well as the contributors' home and work telephone numbers. *Id.* In addition, and apparently because of the President's attendance at the fund-raiser, contributors were asked to provide their dates of birth and Social Security numbers, and were told to bring photographic identification to the fund-raiser. *Id.* The reply card stated that corporate contributions, contributions from individuals under the age of 18, and contributions from non-U.S. citizens were prohibited, and it carried a disclaimer stating that it was "authorized and paid for" by the Hinojosa committee. *Id.*

Alonzo Cantu is identified in his response⁴ and in a Dun & Bradstreet ("D & B") corporate database report as president of Alonzo Cantu Construction, Inc. ("Cantu Construction"). The D & B report states that Cantu Construction is a Texas corporation, engaged in the development of residential real estate, with its principal place of business in McAllen, Texas. Cantu Construction appears to be a relatively small and closely held corporation; according to the D & B report, the firm has 20 employees and Alonzo Cantu and Lupe Cantu each own 50 percent of the corporation's stock.

⁴ Alonzo Cantu's response was styled as his own. No separate response was filed on behalf of Alonzo Cantu Construction, Inc.

According to information from its World Wide Web site, Texas Commerce Bank, N.A., a "wholly-owned subsidiary of The Chase Manhattan Corporation," changed its name to Chase Bank of Texas, N.A. effective January 20, 1998. According to a search of the Federal Deposit Insurance Corporation's database of insured financial institutions, which is also accessible on the World Wide Web, Chase Bank of Texas, N.A. is a national bank, regulated by the Office of the Comptroller of the Currency, U.S. Department of the Treasury.

Complainant Haughey alleges that a Dan Bautista, whom Haughey identifies as "head of the Hidalgo County chapter of the Republican National Hispanic Assembly," told Haughey that Bautista was contacted by two "Mexican nationals" whom Bautista said told him that they had purchased tickets to the January 9 Hinojosa fund-raiser and that they had done so after being "pressured by employees of Texas Commerce Bank on bank premises." MUR 4710, Complaint at 1. The complaint further alleges that "Other individuals with offices within the bank tower were also offered tickets by employees." *Id.* The complaint does not identify the two Mexican nationals who allegedly purchased tickets to the fund-raiser, much less state whether those persons were lawfully admitted to the United States for permanent residence. The complaint also fails to identify the "other individuals" who were allegedly solicited. However, it provides telephone and beeper numbers and E-mail and physical addresses for Dan Bautista.

In response to the complaint, the Hinojosa Committee states that it followed the procedures outlined in 11 C.F.R. § 103.3(b) for determining the legality of contributions. MUR 4710, Response of Rubén Hinojosa for Congress at 2. The Hinojosa Committee also asserts that

The complaint implies, but does not state, that the alleged solicitations took place at Texas Commerce Bank's McAllen branch. For the Commission's information, the *Rand McNally Standard Highway Mileage Guide* shows the center of McAllen located approximately eight miles from the U.S.-Mexico border.

after it received the complaint in this matter, it reexamined its records of the January 9 event, and compared contributors' checks with their reply cards; the Committee asserts that based on its review, "[o]n one or two occasions, it contacted donors to verify their citizenship status," but that it received no information suggesting it had received any "impermissible" contributions. *Id.* at 3.

Chase Bank of Texas, N.A. ("the bank") responded that after receiving notification of the complaint in this matter, it asked the CEO of its Rio Grande Valley region to review the allegations in the complaint and determine whether there was any evidence to support them. The bank asserted that

[O]ur CEO made inquiries of multiple officers of the bank with responsibilities pertaining to both international and domestic clients to determine whether or not those individuals had any knowledge that the events asserted in [the complaint] occurred. No evidence whatsoever was found that such events did in fact occur.

MUR 4710, Response of Chase Bank of Texas, N.A., at 1-2.

Complainant Haughey further alleges that Cantu Construction illegally facilitated the making of contributions by others to the Hinojosa Committee. Specifically, as recounted in the complaint, Dan Bautista told Haughey that "Mr. [Alonzo] Cantu was using the employees of his incorporated construction company to sell tickets" to the January 9 fund-raiser at Cantu's home. MUR 4710, Complaint, at 1. In an attempt to verify Bautista's allegations, Haughey writes, he directed a volunteer for his campaign named Lorraine Owens to contact Cantu Construction and inquire about tickets to the fund-raiser. As alleged in the complaint:

Mr. Cantu's secretary got him on a cell phone and acted as intermediary in the attempt to sell Lorraine tickets. She was told she could pick them up at the construction company but that being on the list was what mattered and that they would fax her the secret service questionnaire if she decided to make the purchase.

Id.

According to his response, neither Cantu nor either of his secretaries recall speaking with anyone named Lorraine Owens, although none specifically deny that the conversation recounted in the complaint took place. MUR 4710, Response of Alonzo Cantu at 1. Cantu's response essentially asserts that, to the extent any of his activities in connection with the fund-raiser were conducted on the premises of Alonzo Cantu Construction, Inc., they were individual volunteer activity. See generally *id.* at 2. Moreover, the response asserts that "the corporation did not assign its employees to work on the [Hinojosa] campaign." *Id.* at 2.

C. Analysis

1. Foreign Nationals

There is insufficient evidence to support a finding of reason to believe with respect to the complaint's allegations of contributions by foreign nationals. The recipient committee asserts it followed the procedures prescribed in 11 C.F.R. § 103.3 at the time it received contributions in connection with the January 9 fund-raiser. It also asserts that after it was notified of the complaint, it double-checked the identifying information for each contributor against the information on their contribution checks, and found no indication that it had received any illegal contributions.⁶ The bank whose employees are alleged to have solicited the contributions asserts

* As noted, the Hinojosa committee stated that as part of its review, "[o]n one or two occasions, it contacted donors to verify their citizenship status," but that "the Committee's review produced no information to suggest that it had received any impermissible contribution." Response of Rubén Hinojosa for Congress at 2-3. The Committee's response is not phrased in a manner that indicates that it received affirmative evidence of the legality of the "one or two" contributions.

Also as noted, when a treasurer receives a contribution that presents a genuine question as to whether or not it is legal, the treasurer has the option of returning the check or depositing it within ten days; if the treasurer deposits the check, he or she must make specified best efforts to determine whether the contribution was legal, and if the contribution cannot be determined to be legal, it must be refunded within 30 days of receipt. 11 C.F.R. § 103.3(b)(1). If at the time of receipt a contribution poses no genuine question as to its legality, but the treasurer subsequently obtains new information that the contribution was in fact illegal, the contribution must be refunded within 30 days of discovery of the illegality. 11 C.F.R. § 103.3(b)(2). In Advisory Opinion 1995-19, where a

(Footnote continued on following page)

that its internal review showed no evidence that the alleged solicitations took place. More significantly, an examination by this Office of the Hinojosa committee's 1997 Year-End and 1998 Pre-Primary reports revealed no contributions or pattern of contributions that raised any particular suspicions that they were made by foreign nationals. Those reports showed no contributions made by any employees of Texas Commerce Bank, and only one contribution made by any person with an address identical to that of the bank's branch in McAllen; that person, an attorney whose firm is evidently in the same building as the bank, was listed in the *Martindale-Hubbell* legal directory as having been born in the United States. Against these facts and assertions, the complainant repeats a second-hand allegation somebody assertedly told him; but he does not say who the contributors were, how much they contributed, when they made the contributions or who at Texas Commerce Bank pressured them.

In short, the complaint offers virtually no facts to substantiate its allegation. Given the flat denials of the allegations by both the Hinojosa committee and Chase Bank of Texas and the lack of anything in either the responses or the public record that would bolster the complaint, it

committee received information that raised genuine questions about, but did not conclusively demonstrate the illegality of, contributions that had presented no such questions at the time of receipt, the Commission determined that the committee was required to exercise best efforts to determine the legality of the contributions and would have to disburse an equivalent amount for any lawful purpose not related to any Federal campaign, committee or candidate if it could not determine that the contributions were legal.

The Commission's decision in AO 1995-19 was based on the highly detailed nature of the information that was made available to the committee's treasurer. There, the treasurer stated that he had met with a newspaper reporter who said he had investigated a number of particular contributions and determined that the makers of the contributions had been reimbursed for them, moreover, the article the reporter eventually wrote contained "specific information as to the conduct of the alleged original contributor" and "assertions by some contributors . . . that they were reimbursed for their donations," and the treasurer had since been asked for information about the contributions by the FBI.

By contrast, in this Office's view the complaint currently before the Commission does not even contain enough information to meet the relatively low "reason to believe" threshold. Accordingly, this report does not further address whether the Hinojosa committee was required to obtain affirmative evidence of the legality of the "one or two" contributions for which it sought further information.

would appear that there are no facts on this record that would justify the opening of an investigation. Accordingly, we recommend the Commission find no reason to believe that Rubén Hinojosa for Congress or its treasurer, or Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A., violated 2 U.S.C. § 441e in connection with the allegations in MUR 4710.

2. Corporate Facilitation

a. Chase Bank of Texas (f/k/a Texas Commerce Bank)

Taken in the light most favorable to the complainant, the complaint's allegations about foreign national contributions and its allegation that "[o]ther individuals within the bank tower were also offered tickets by employees" can be read as allegations that Texas Commerce Bank illegally facilitated the making of contributions to the Hinojosa committee. However, there are no more facts to support the allegation of facilitation by the bank than there are to support the allegation of foreign national contributions. For similar reasons, there is no basis to investigate the facilitation allegation. Accordingly, we recommend the Commission find no reason to believe that Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A., violated 2 U.S.C. § 441b(a) in connection with the allegations in MUR 4710, and close the file with respect to Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A.

b. Alonzo Cantu Construction, Inc.

It appears that a number of activities may have occurred on the premises of Cantu Construction in connection with the Hinojosa committee's January 9 fund-raiser. First, it appears that telephone calls about the fund-raiser may have been fielded at the company. Haughey alleges that his campaign volunteer received information about the fund-raiser when she called the company, and neither Cantu nor his secretaries specifically deny that the call took

place. Second, it appears that a list of attendees may have been maintained at the company for later transmittal to the Hinojosa campaign; Haughey alleges that his volunteer was told that "being on the list was what mattered." Third, it appears that someone at Cantu Construction may have faxed out information about the fund-raiser in response to requests for information; Haughey alleges that someone offered to "fax [Owens] the secret service questionnaire," which presumably meant the reply card. Fourth, it appears that tickets to the fund-raiser may have been held and distributed at the company; Haughey alleges that his volunteer was told "she could pick [the tickets] up at the construction company." Holding and distribution of the tickets implies that they may have been sold at the construction company; if they were sold, that implies that contributions to the Hinojosa committee may have been collected and forwarded at the construction company.

Assuming any or all of the above activities occurred, analysis of whether and how the Act may have been violated begins with an important piece of information that is by no means clear from the record so far: namely, who engaged in the activities. From the complaint and the responses, it could be inferred that employees of the company other than Cantu engaged in at least some of them.

Cantu argues that the mere transmission of a telephone call about contributions by a secretary to his or her supervisor does not constitute facilitation simply because of the content of the call. However, nowhere in Cantu's response is there a flat assertion that the involvement of the construction company's employees was limited to transmitting telephone calls to him. Instead, the circumstances seem to indicate a somewhat more substantial role for the employees. If the complaint's recitation of the facts is accurate, Cantu was out of the office at the time Owens called, because his secretary allegedly had to reach him on the cellular phone. Moreover,

the response refers to Cantu's "daily work" as being "in or out of the office." If Cantu's work regularly took him out of the office, as would seem likely for a developer of residential real estate, and the tickets were being sold at the office, someone other than Cantu may have had to collect the contributions and hand over the tickets when he was not there.

In addition, although the response asserts that none of the employees were "assigned to work on the campaign," there is no specific assertion that their involvement, if any, was individual or voluntary, nor are there facts recounted in the response that would unmistakably show that their involvement was individual or voluntary. The response's reference to the individual volunteer activity exemption is somewhat ambiguous, but it would appear to refer more to Cantu himself than to the employees, inasmuch as it comes after assertions that "Mr. Cantu's activity on behalf of Congressman Hinojosa was done as an individual and not as an officer or employee of a corporation," that "The fact that Mr. Cantu earns his living as an owner and officer of a construction company does not deprive him of the right to engage in political activities as an individual," and that "In the course of his daily work, in or out of the office, Mr. Cantu may receive and transmit business communications, personal communications, or political communications." See generally Response of Alonzo Cantu at 2.

Accordingly, it appears possible both that Cantu Construction employees were involved in activities related to the Hinojosa fund-raiser and that their involvement may have been undertaken as part of their work responsibilities under at least the implicit direction of Alonzo Cantu. It also appears possible that if the employees were involved, their involvement included the use of corporate resources such as telephones, a fax machine, and perhaps the space necessary to keep a list of attendees and hold tickets and contributions. If these possibilities proved true, then the employees' involvement would amount to corporate facilitation under

11 C.F.R. § 114.2(f)(2)(i)(A), unless the corporation had received advance payment for the fair market value of the employees' services.

By contrast, it also appears possible that Cantu personally provided information about the fund-raiser to potential contributors by phone and fax, maintained a list of invitees, sold tickets, and collected and forwarded contributions. Cantu would appear to be both a stockholder and an employee of Cantu Construction, and, as noted, his response appears to assert that his involvement with the Hinojosa fund-raiser was both individual and voluntary. If Cantu's involvement was individual and voluntary, he could as either a stockholder or employee make occasional, isolated, and incidental use of the corporation's facilities and the corporation would only have to be reimbursed to the extent Cantu's activities increased the corporation's overhead costs. 11 C.F.R. § 114.9(a) Cantu's involvement was occasional, isolated, or incidental if it did not prevent him from completing the normal amount of work he usually carried out during that work period, or if it did not exceed one hour per week or four hours per month. 11 C.F.R. § 114.9(a)(1)(i) and (iii) If Cantu's fundraising activities using corporate resources were more than occasional, isolated or incidental, the corporation would have had to receive reimbursement for the usual and normal rental charge for Cantu's use of the corporate facilities within a reasonable amount of time to avoid having made a prohibited corporate contribution to the Hinojosa campaign. 11 C.F.R. § 114.9(a)(2)

Cantu argues that "there is no indication from the complaint that the . . . phone call, placed to Mr. Cantu at his workplace, prevented any corporate employees from completing the normal amount of work." But more than the phone call is at issue. There is no statement in the response that gives any indication how much or how little of his work time Cantu spent on the Hinojosa fund-raiser, or whether any reimbursement was made to the corporation for Cantu's use

of its facilities if his fundraising activities on corporate premises were more than occasional, isolated or incidental.

In sum, the complaint and Cantu's response contain information from which one can infer that Alonzo Cantu Construction, Inc. may have made illegal in-kind contributions to the Hinojosa committee, through facilitation or otherwise. However, they do not contain sufficient information to permit a complete analysis under either 11 C.F.R. § 114.2(f) or 11 C.F.R. § 114.9. Accordingly, because further investigation is necessary to resolve the remaining issues, there is reason to believe that Alonzo Cantu Construction, Inc. and Alonzo Cantu, as an officer, violated 2 U.S.C. § 441b(a). Because of Cantu's apparently close relationship to the Hinojosa campaign, as evidenced by the fact that the fund-raiser was held at his residence, and the possibility that Cantu was acting as an agent of the campaign for the collection and forwarding of contributions, there is also reason to believe that Ruben Hinojosa for Congress Committee and its treasurer violated 2 U.S.C. § 441b(a) in that they may have knowingly accepted in-kind contributions from Alonzo Cantu Construction, Inc. and Alonzo Cantu, as an officer.

IV. RECOMMENDATIONS

1. Find reason to believe that Alonzo Cantu Construction, Inc. and Alonzo Cantu, as an officer, violated 2 U.S.C. § 441b(a).
2. Find reason to believe that Rubén Hinojosa for Congress and Vickie L. Winpisinger, as treasurer, violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Rubén Hinojosa for Congress or Vickie L. Winpisinger, as treasurer, violated 2 U.S.C. § 441e based on the allegations in this matter.
4. Find no reason to believe that Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A., violated 2 U.S.C. §§ 441b(a) or 441e based on the allegations in this matter, and close the file with respect to Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A.
5. Approve the attached Factual and Legal Analyses.
6. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 3/16/99

BY 
Lois G. Lerner
Associate General Counsel

Attachments

1. Factual and Legal Analyses

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Rubén Hinojosa for Congress MUR: 4710
 and Vickie L. Winpisinger, as treasurer¹

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Tom Haughey and Tom Haughey for Congress. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

1. Foreign Nationals

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits the solicitation, making, and receipt of any campaign contribution from foreign nationals. 2 U.S.C. § 441e(a). Included in the Act's definition of a "foreign national" are, among others, noncitizens who are not lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20). Permanent resident aliens are not considered foreign nationals and are generally permitted to make contributions. 2 U.S.C. § 441e(b)(1) and (2); 22 U.S.C. § 611(b)(2).

Treasurers of political committees are responsible for examining all contributions received in order to ascertain their legality. 11 C.F.R. § 103.3(b). Contributions that present

¹ Rey Jaquez was treasurer of Rubén Hinojosa for Congress at the time of the events related in the complaint. On June 8, 1998, Rubén Hinojosa for Congress filed an amended Statement of Organization naming Vickie L. Winpisinger as treasurer.

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genuine questions as to whether they were made from prohibited sources, including contributions that may have been made by foreign nationals, may be, within ten days of receipt, either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If the treasurer opts to deposit such a contribution, the treasurer must make his or her best efforts to ascertain the legality of the contribution; at minimum, he or she must make at least one written or oral request for evidence that the contribution is legal. *Id.* If the contribution cannot be determined to be legal, the treasurer must refund the contribution within 30 days of receipt. *Id.* If the treasurer, at the time of receipt and deposit, determined that a contribution did not appear to come from a prohibited source, but later discovers new evidence not available at the time of receipt or deposit that the contribution was in fact illegal, the treasurer must refund the contribution to the contributor within 30 days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

2. Corporate Facilitation

In addition to prohibiting contributions by foreign nationals, the Act prohibits corporations from making contributions in connection with Federal elections. 2 U.S.C. § 441b(a). Further, the Act prohibits any officer or director of any corporation from consenting to any such contribution, and prohibits any candidate, political committee, or other person from knowingly accepting or receiving any such contribution. 2 U.S.C. § 441b(a). As used in Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any office referred to in Section 441b. 2 U.S.C. § 441b(b)(2).

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To effectuate this prohibition, corporations, including officers, directors, or other representatives acting as agents of corporations, are prohibited from facilitating the making of contributions to candidates or to political committees other than the corporation's separate segregated fund. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.* Examples of facilitating the making of contributions include, but are not limited to, fundraising activities by corporations which involve 1) officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services; 2) failure to reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture); 3) using a corporate list to solicit contributions in connection with a fund-raiser, unless the corporation receives advance payment for the fair market value of the list; 4) using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or 5) providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting or delivering contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions, *see, e.g.* MUR 3672.

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Notwithstanding these provisions, Commission regulations also contain certain safe harbors for the use of corporate resources in connection with Federal elections. For example, employees or shareholders of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity which does not exceed one hour per week or four hours per month, for individual volunteer activity in connection with a Federal election. Such employees or shareholders are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a).

B. Facts and Allegations

It is not disputed that on January 9, 1998, Rubén Hinojosa for Congress held a fundraising brunch at the home of Alonzo and Yolanda Cantu in McAllen, Texas, or that President Clinton appeared at the brunch. A copy of an invitation to the fund-raiser and a reply card was attached to the Hinojosa Committee's response. MUR 4710, Response of Rubén Hinojosa for Congress at 6-7. Those who wished to attend the brunch were requested to contribute \$1,000 to the Hinojosa Committee. *Id.* at 7. The reply card further asked contributors to provide identifying information, including the identifying information the Hinojosa Committee was required to report to the Commission by 2 U.S.C. § 434, as well as the contributors' home and work telephone numbers. *Id.* In addition, and apparently because of the President's attendance at the fund-raiser, contributors were asked to provide their dates of birth and Social Security numbers, and were told to bring photographic identification to the fund-raiser. *Id.* The reply card stated that corporate contributions, contributions from individuals under the age of 18, and contributions from non-U.S. citizens were prohibited, and it carried a disclaimer stating that it was "authorized and paid for" by the Hinojosa committee. *Id.*

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Alonzo Cantu is identified in a Dun & Bradstreet ("D & B") corporate database report as president of Alonzo Cantu Construction, Inc. ("Cantu Construction"). The D & B report states that Cantu Construction is a Texas corporation, engaged in the development of residential real estate, with its principal place of business in McAllen, Texas. Cantu Construction appears to be a relatively small and closely held corporation; according to the D & B report, the firm has 20 employees and Alonzo Cantu and Lupe Cantu each own 50 percent of the corporation's stock.

According to information from its World Wide Web site, Texas Commerce Bank, N.A., a "wholly-owned subsidiary of The Chase Manhattan Corporation," changed its name to Chase Bank of Texas, N.A. effective January 20, 1998. According to a search of the Federal Deposit Insurance Corporation's database of insured financial institutions, which is also accessible on the World Wide Web, Chase Bank of Texas, N.A. is a national bank, regulated by the Office of the Comptroller of the Currency, U.S. Department of the Treasury.

Complainant Haughey alleges that a Dan Bautista, whom Haughey identifies as "head of the Hidalgo County chapter of the Republican National Hispanic Assembly," told Haughey that Bautista was contacted by two "Mexican nationals" whom Bautista said told him that they had purchased tickets to the January 9 Hinojosa fund-raiser and that they had done so after being "pressured by employees of Texas Commerce Bank on bank premises." MUR 4710, Complaint at 1. The complaint further alleges that "Other individuals with offices within the bank tower were also offered tickets by employees."² *Id.* The complaint does not identify the two Mexican nationals who allegedly purchased tickets to the fund-raiser, much less state whether those

² The complaint implies, but does not state, that the alleged solicitations took place at Texas Commerce Bank's McAllen branch.

persons were lawfully admitted to the United States for permanent residence. The complaint also fails to identify the "other individuals" who were allegedly solicited. However, it provides telephone and beeper numbers and E-mail and physical addresses for Dan Bautista.

In response to the complaint, the Hinojosa Committee states that it followed the procedures outlined in 11 C.F.R. § 103.3(b) for determining the legality of contributions. MUR 4710, Response of Rubén Hinojosa for Congress at 2. The Hinojosa Committee also asserts that after it received the complaint in this matter, it reexamined its records of the January 9 event, and compared contributors' checks with their reply cards; the Committee asserts that based on its review, "[o]n one or two occasions, it contacted donors to verify their citizenship status," but that it received no information suggesting it had received any "impermissible" contributions. *Id.* at 3.

Chase Bank of Texas, N.A. ("the bank") has asserted that after receiving notification of the complaint in this matter, it asked the CEO of its Rio Grande Valley region to review the allegations in the complaint and determine whether there was any evidence to support them. The bank has further asserted that

[O]ur CEO made inquiries of multiple officers of the bank with responsibilities pertaining to both international and domestic clients to determine whether or not those individuals had any knowledge that the events asserted in [the complaint] occurred. No evidence whatsoever was found that such events did in fact occur.

Complainant Haughey further alleges that Cantu Construction illegally facilitated the making of contributions by others to the Hinojosa Committee. Specifically, as recounted in the complaint, Dan Bautista told Haughey that "Mr. [Alonzo] Cantu was using the employees of his incorporated construction company to sell tickets" to the January 9 fund-raiser at Cantu's home. MUR 4710, Complaint, at 1. In an attempt to verify Bautista's allegations, Haughey writes, he

directed a volunteer for his campaign named Lorraine Owens to contact Cantu Construction and inquire about tickets to the fund-raiser. As alleged in the complaint:

Mr. Cantu's secretary got him on a cell phone and acted as intermediary in the attempt to sell Lorraine tickets. She was told she could pick them up at the construction company but that being on the list was what mattered and that they would fax her the secret service questionnaire if she decided to make the purchase.

Id.

According to information in the Commission's possession, neither Cantu nor either of his secretaries recall speaking with anyone named Lorraine Owens, although none specifically deny that the conversation recounted in the complaint took place. Cantu has asserted that "the corporation did not assign its employees to work on the [Hinojosa] campaign."

C. Analysis

1. Foreign Nationals

There is insufficient evidence to support a finding of reason to believe with respect to the complaint's allegations of contributions by foreign nationals. The recipient committee asserts it followed the procedures prescribed in 11 C.F.R. § 103.3 at the time it received contributions in connection with the January 9 fund-raiser. It also asserts that after it was notified of the complaint, it double-checked the identifying information for each contributor against the information on their contribution checks, and found no indication that it had received any illegal

contributions.³ The bank whose employees are alleged to have solicited the contributions asserts that its internal review showed no evidence that the alleged solicitations took place. More significantly, an examination of the Hinojosa committee's 1997 Year-End and 1998 Pre-Primary reports revealed no contributions or pattern of contributions that raised any particular suspicions that they were made by foreign nationals. Those reports showed no contributions made by any employees of Texas Commerce Bank, and only one contribution made by any person with an address identical to that of the bank's branch in McAllen; that person, an attorney whose firm is evidently in the same building as the bank, was listed in the *Martindale-Hubbell* legal directory

³ As noted, the Hinojosa committee stated that as part of its review, "[o]n one or two occasions, it contacted donors to verify their citizenship status," but that "the Committee's review produced no information to suggest that it had received any impermissible contribution." Response of Rubén Hinojosa for Congress at 2-3. The Committee's response is not phrased in a manner that indicates that it received affirmative evidence of the legality of the "one or two" contributions.

Also as noted, when a treasurer receives a contribution that presents a genuine question as to whether or not it is legal, the treasurer has the option of returning the check or depositing it within ten days; if the treasurer deposits the check, he or she must make specified best efforts to determine whether the contribution was legal, and if the contribution cannot be determined to be legal, it must be refunded within 30 days of receipt. 11 C.F.R. § 103.3(b)(1). If at the time of receipt a contribution poses no genuine question as to its legality, but the treasurer subsequently obtains new information that the contribution was in fact illegal, the contribution must be refunded within 30 days of discovery of the illegality. 11 C.F.R. § 103.3(b)(2). In Advisory Opinion 1995-19, where a committee received information that raised genuine questions about, but did not conclusively demonstrate the illegality of, contributions that had presented no such questions at the time of receipt, the Commission determined that the committee was required to exercise best efforts to determine the legality of the contributions and would have to disburse an equivalent amount for any lawful purpose not related to any Federal campaign, committee or candidate if it could not determine that the contributions were legal.

The Commission's decision in AO 1995-19 was based on the highly detailed nature of the information that was made available to the committee's treasurer. There, the treasurer stated that he had met with a newspaper reporter who said he had investigated a number of particular contributions and determined that the makers of the contributions had been reimbursed for them; moreover, the article the reporter eventually wrote contained "specific information as to the conduct of the alleged original contributor" and "assertions by some contributors . . . that they were reimbursed for their donations," and the treasurer had since been asked for information about the contributions by the FBI.

By contrast, in the Commission's view the complaint currently before it does not even contain enough information to meet the relatively low "reason to believe" threshold. Accordingly, this analysis does not further address whether the Hinojosa committee was required to obtain affirmative evidence of the legality of the "one or two" contributions for which it sought further information.

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as having been born in the United States. Against these facts and assertions, the complainant repeats a second-hand allegation somebody assertedly told him; but he does not say who the contributors were, how much they contributed, when they made the contributions or who at Texas Commerce Bank pressured them.

In short, the complaint offers virtually no facts to substantiate its allegation. Given the flat denials of the allegations by both the Hinojosa committee and Chase Bank of Texas and the lack of anything in the public record that would bolster the complaint, it would appear that there are no facts on this record that would justify the opening of an investigation.

Accordingly, there is no reason to believe that Rubén Hinojosa for Congress or Vickie L. Winpisinger, as treasurer, violated 2 U.S.C. § 441e in connection with the allegations in MUR 4710.

2. Corporate Facilitation

It appears that a number of activities may have occurred on the premises of Cantu Construction in connection with the Hinojosa committee's January 9 fund-raiser. First, it appears that telephone calls about the fund-raiser may have been fielded at the company. Haughey alleges that his campaign volunteer received information about the fund-raiser when she called the company, and neither Cantu nor his secretaries specifically deny that the call took place. Second, it appears that a list of attendees may have been maintained at the company for later transmittal to the Hinojosa campaign; Haughey alleges that his volunteer was told that "being on the list was what mattered." Third, it appears that someone at Cantu Construction may have faxed out information about the fund-raiser in response to requests for information; Haughey alleges that someone offered to "fax [Owens] the secret service questionnaire," which presumably meant the reply card. Fourth, it appears that tickets to the fund-raiser may have been

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held and distributed at the company; Haughey alleges that his volunteer was told "she could pick [the tickets] up at the construction company." Holding and distribution of the tickets implies that they may have been sold at the construction company; if they were sold, that implies that contributions to the Hinojosa committee may have been collected and forwarded at the construction company.

Assuming any or all of the above activities occurred, analysis of whether and how the Act may have been violated begins with an important piece of information that is by no means clear from the record so far: namely, who engaged in the activities. From the information available to the Commission to date, it can be inferred that employees of the company other than Cantu engaged in at least some of them.

Cantu has argued that the mere transmission of a telephone call about contributions by a secretary to his or her supervisor does not constitute facilitation simply because of the content of the call. However, Cantu has not flatly asserted that the involvement of the construction company's employees was limited to transmitting telephone calls to him. Instead, the circumstances seem to indicate a somewhat more substantial role for the employees. If the complaint's recitation of the facts is accurate, Cantu was out of the office at the time Owens called, because his secretary allegedly had to reach him on the cellular phone. Moreover, if Cantu's work regularly took him out of the office, as would seem likely for a developer of residential real estate, and the tickets were being sold at the office, someone other than Cantu may have had to collect the contributions and hand over the tickets when he was not there.

In addition, although Cantu has asserted that none of the employees were "assigned to work on the campaign," he has not specifically asserted that their involvement, if any, was

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individual or voluntary, nor is the Commission in possession at this time of any facts that would unmistakably show that their involvement was individual or voluntary.

Accordingly, it appears possible both that Cantu Construction employees were involved in activities related to the Hinojosa fund-raiser and that their involvement may have been undertaken as part of their work responsibilities under at least the implicit direction of Alonzo Cantu. It also appears possible that if the employees were involved, their involvement included the use of corporate resources such as telephones, a fax machine, and perhaps the space necessary to keep a list of attendees and hold tickets and contributions. If these possibilities proved true, then the employees' involvement would amount to corporate facilitation under 11 C.F.R. § 114.2(f)(2)(i)(A), unless the corporation had received advance payment for the fair market value of the employees' services.

By contrast, it also appears possible that Cantu personally provided information about the fund-raiser to potential contributors by phone and fax, maintained a list of invitees, sold tickets, and collected and forwarded contributions. Cantu would appear to be both a stockholder and an employee of Cantu Construction. If Cantu's involvement with the Hinojosa committee's fund-raiser was individual and voluntary, he could as either a stockholder or employee make occasional, isolated, and incidental use of the corporation's facilities and the corporation would only have to be reimbursed to the extent Cantu's activities increased the corporation's overhead costs. 11 C.F.R. § 114.9(a). Cantu's involvement was occasional, isolated, or incidental if it did not prevent him from completing the normal amount of work he usually carried out during that work period, or if it did not exceed one hour per week or four hours per month. 11 C.F.R. § 114.9(a)(1)(i) and (iii). If Cantu's fundraising activities using corporate resources were more than occasional, isolated or incidental, the corporation would have had to receive reimbursement

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for the usual and normal rental charge for Cantu's use of the corporate facilities within a reasonable amount of time to avoid having made a prohibited corporate contribution to the Hinojosa campaign. 11 C.F.R. § 114.9(a)(2).

Cantu has argued that "there is no indication from the complaint that the . . . phone call, placed to Mr. Cantu at his workplace, prevented any corporate employees from completing the normal amount of work." But more than the phone call is at issue. The Commission does not presently possess any information that indicates how much or how little of his work time Cantu spent on the Hinojosa fund-raiser, or whether any reimbursement was made to the corporation for Cantu's use of its facilities if his fundraising activities on corporate premises were more than occasional, isolated or incidental.

In sum, the Commission possesses information from which one can infer that Alonzo Cantu Construction, Inc. may have made illegal in-kind contributions to the Hinojosa committee, through facilitation or otherwise. Because of Cantu's apparently close relationship to the Hinojosa campaign, as evidenced by the fact that the fund-raiser was held at his residence, and the possibility that Cantu was acting as an agent of the campaign for the collection and forwarding of contributions, there is reason to believe that Rubén Hinojosa for Congress Committee and Vickie L. Winpisinger, as treasurer, violated 2 U.S.C. § 441b(a) in that they may have knowingly accepted in-kind contributions from Alonzo Cantu Construction, Inc. and Alonzo Cantu, as an officer.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Alonzo Cantu Construction, Inc.
and Alonzo Cantu, as an officer

MUR: 4710

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Tom Haughey and Tom Haughey for Congress. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits corporations from making contributions in connection with Federal elections. 2 U.S.C. § 441b(a). Further, the Act prohibits any officer or director of any corporation from consenting to any such contribution. 2 U.S.C. § 441b(a). As used in Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any office referred to in Section 441b. 2 U.S.C. § 441b(b)(2).

To effectuate this prohibition, corporations, including officers, directors, or other representatives acting as agents of corporations, are prohibited from facilitating the making of contributions to candidates or to political committees other than the corporation's separate segregated fund. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.* Examples of

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facilitating the making of contributions include, but are not limited to, fundraising activities by corporations which involve 1) officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services; 2) failure to reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture); 3) using a corporate list to solicit contributions in connection with a fund-raiser, unless the corporation receives advance payment for the fair market value of the list; 4) using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or 5) providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting or delivering contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions, *see, e.g.* MUR 3672.

Notwithstanding these provisions, Commission regulations also contain certain safe harbors for the use of corporate resources in connection with Federal elections. For example, employees or shareholders of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity which does not exceed one hour per week or four hours per month, for individual volunteer activity in connection with a Federal election.

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Such employees or shareholders are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a).

B. Facts and Allegations

It is not disputed that on January 9, 1998, Rubén Hinojosa for Congress held a fundraising brunch at the home of Alonzo and Yolanda Cantu in McAllen, Texas, or that President Clinton appeared at the brunch. Those who wished to attend the brunch were requested to contribute \$1,000 to the Hinojosa Committee. The reply card asked contributors to provide identifying information, including the identifying information the Hinojosa Committee was required to report to the Commission by 2 U.S.C. § 434, as well as the contributors' home and work telephone numbers. In addition, and apparently because of the President's attendance at the fund-raiser, contributors were asked to provide their dates of birth and Social Security numbers, and were told to bring photographic identification to the fund-raiser. The reply card carried a disclaimer stating that it was "authorized and paid for" by the Hinojosa committee.

Alonzo Cantu is identified in his response¹ and in a Dun & Bradstreet ("D & B") corporate database report as president of Alonzo Cantu Construction, Inc. ("Cantu Construction"). The D & B report states that Cantu Construction is a Texas corporation, engaged in the development of residential real estate, with its principal place of business in McAllen, Texas. Cantu Construction appears to be a relatively small and closely held corporation; according to the D & B report, the firm has 20 employees and Alonzo Cantu and Lupe Cantu each own 50 percent of the corporation's stock.

¹ Alonzo Cantu's response was styled as his own. No separate response was filed on behalf of Alonzo Cantu Construction, Inc.

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Complainant Haughey alleges that Cantu Construction illegally facilitated the making of contributions by others to the Hinojosa Committee. Specifically, as recounted in the complaint, Dan Bautista told Haughey that "Mr. [Alonzo] Cantu was using the employees of his incorporated construction company to sell tickets" to the January 9 fund-raiser at Cantu's home. MUR 4710, Complaint, at 1. In an attempt to verify Bautista's allegations, Haughey writes, he directed a volunteer for his campaign named Lorraine Owens to contact Cantu Construction and inquire about tickets to the fund-raiser. As alleged in the complaint:

Mr. Cantu's secretary got him on a cell phone and acted as intermediary in the attempt to sell Lorraine tickets. She was told she could pick them up at the construction company but that being on the list was what mattered and that they would fax her the secret service questionnaire if she decided to make the purchase.

Id.

According to his response, neither Cantu nor either of his secretaries recall speaking with anyone named Lorraine Owens, although none specifically deny that the conversation recounted in the complaint took place. MUR 4710, Response of Alonzo Cantu at 1. Cantu's response essentially asserts that, to the extent any of his activities in connection with the fund-raiser were conducted on the premises of Alonzo Cantu Construction, Inc., they were individual volunteer activity. *See generally id.* at 2. Moreover, the response asserts that "the corporation did not assign its employees to work on the [Hinojosa] campaign." *Id.* at 2.

C. Analysis

It appears that a number of activities may have occurred on the premises of Cantu Construction in connection with the Hinojosa committee's January 9 fund-raiser. First, it appears that telephone calls about the fund-raiser may have been fielded at the company. Haughey alleges that his campaign volunteer received information about the fund-raiser when

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she called the company, and neither Cantu nor his secretaries specifically deny that the call took place. Second, it appears that a list of attendees may have been maintained at the company for later transmittal to the Hinojosa campaign; Haughey alleges that his volunteer was told that "being on the list was what mattered." Third, it appears that someone at Cantu Construction may have faxed out information about the fund-raiser in response to requests for information; Haughey alleges that someone offered to "fax [Owens] the secret service questionnaire," which presumably meant the reply card. Fourth, it appears that tickets to the fund-raiser may have been held and distributed at the company; Haughey alleges that his volunteer was told "she could pick [the tickets] up at the construction company." Holding and distribution of the tickets implies that they may have been sold at the construction company; if they were sold, that implies that contributions to the Hinojosa committee may have been collected and forwarded at the construction company.

Assuming any or all of the above activities occurred, analysis of whether and how the Act may have been violated begins with an important piece of information that is by no means clear from the record so far: namely, who engaged in the activities. From the complaint and the responses, it could be inferred that employees of the company other than Cantu engaged in at least some of them.

Cantu argues that the mere transmission of a telephone call about contributions by a secretary to his or her supervisor does not constitute facilitation simply because of the content of the call. However, nowhere in Cantu's response is there a flat assertion that the involvement of the construction company's employees was limited to transmitting telephone calls to him. Instead, the circumstances seem to indicate a somewhat more substantial role for the employees. If the complaint's recitation of the facts is accurate, Cantu was out of the office at the time

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Owens called, because his secretary allegedly had to reach him on the cellular phone. Moreover, the response refers to Cantu's "daily work" as being "in or out of the office." If Cantu's work regularly took him out of the office, as would seem likely for a developer of residential real estate, and the tickets were being sold at the office, someone other than Cantu may have had to collect the contributions and hand over the tickets when he was not there.

In addition, although the response asserts that none of the employees were "assigned to work on the campaign," there is no specific assertion that their involvement, if any, was individual or voluntary, nor are there facts recounted in the response that would unmistakably show that their involvement was individual or voluntary. The response's reference to the individual volunteer activity exemption is somewhat ambiguous, but it would appear to refer more to Cantu himself than to the employees, inasmuch as it comes after assertions that "Mr. Cantu's activity on behalf of Congressman Hinojosa was done as an individual and not as an officer or employee of a corporation," that "The fact that Mr. Cantu earns his living as an owner and officer of a construction company does not deprive him of the right to engage in political activities as an individual," and that "In the course of his daily work, in or out of the office, Mr. Cantu may receive and transmit business communications, personal communications, or political communications." *See generally* Response of Alonzo Cantu at 2.

Accordingly, it appears possible both that Cantu Construction employees were involved in activities related to the Hinojosa fund-raiser and that their involvement may have been undertaken as part of their work responsibilities under at least the implicit direction of Alonzo Cantu. It also appears possible that if the employees were involved, their involvement included the use of corporate resources such as telephones, a fax machine, and perhaps the space

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necessary to keep a list of attendees and hold tickets and contributions. If these possibilities proved true, then the employees' involvement would amount to corporate facilitation under 11 C.F.R. § 114.2(f)(2)(i)(A), unless the corporation had received advance payment for the fair market value of the employees' services.

By contrast, it also appears possible that Cantu personally provided information about the fund-raiser to potential contributors by phone and fax, maintained a list of invitees, sold tickets, and collected and forwarded contributions. Cantu would appear to be both a stockholder and an employee of Cantu Construction, and, as noted, his response appears to assert that his involvement with the Hinojosa fund-raiser was both individual and voluntary. If Cantu's involvement was individual and voluntary, he could as either a stockholder or employee make occasional, isolated, and incidental use of the corporation's facilities and the corporation would only have to be reimbursed to the extent Cantu's activities increased the corporation's overhead costs. 11 C.F.R. § 114.9(a). Cantu's involvement was occasional, isolated, or incidental if it did not prevent him from completing the normal amount of work he usually carried out during that work period, or if it did not exceed one hour per week or four hours per month. 11 C.F.R. § 114.9(a)(1)(i) and (iii). If Cantu's fundraising activities using corporate resources were more than occasional, isolated or incidental, the corporation would have had to receive reimbursement for the usual and normal rental charge for Cantu's use of the corporate facilities within a reasonable amount of time to avoid having made a prohibited corporate contribution to the Hinojosa campaign. 11 C.F.R. § 114.9(a)(2).

Cantu argues that "there is no indication from the complaint that the . . . phone call, placed to Mr. Cantu at his workplace, prevented any corporate employees from completing the normal amount of work." But more than the phone call is at issue. There is no statement in the

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response that gives any indication how much or how little of his work time Cantu spent on the Hinojosa fund-raiser, or whether any reimbursement was made to the corporation for Cantu's use of its facilities if his fundraising activities on corporate premises were more than occasional, isolated or incidental.

In sum, the complaint and Cantu's response contain information from which one can infer that Alonzo Cantu Construction, Inc. may have made illegal in-kind contributions to the Hinojosa committee, through facilitation or otherwise. However, they do not contain sufficient information to permit a complete analysis under either 11 C.F.R. § 114.2(f) or 11 C.F.R. § 114.9. Accordingly, because further investigation is necessary to resolve the remaining issues, there is reason to believe that Alonzo Cantu Construction, Inc. and Alonzo Cantu, as an officer, violated 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Chase Bank of Texas, N.A. MUR: 4710
(f/k/a Texas Commerce Bank, N.A.)

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Tom Haughey and Tom Haughey for Congress. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

1. Foreign Nationals

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits the solicitation, making, and receipt of any campaign contribution from foreign nationals. 2 U.S.C. § 441e(a). Included in the Act's definition of a "foreign national" are, among others, noncitizens who are not lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20). Permanent resident aliens are not considered foreign nationals and are generally permitted to make contributions. 2 U.S.C. § 441e(b)(1) and (2); 22 U.S.C. § 611(b)(2).

Treasurers of political committees are responsible for examining all contributions received in order to ascertain their legality. 11 C.F.R. § 103.3(b). Contributions that present genuine questions as to whether they were made from prohibited sources, including contributions that may have been made by foreign nationals, may be, within ten days of receipt, either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If

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the treasurer opts to deposit such a contribution, the treasurer must make his or her best efforts to ascertain the legality of the contribution; at minimum, he or she must make at least one written or oral request for evidence that the contribution is legal. *Id.* If the contribution cannot be determined to be legal, the treasurer must refund the contribution within 30 days of receipt. *Id.* If the treasurer, at the time of receipt and deposit, determined that a contribution did not appear to come from a prohibited source, but later discovers new evidence not available at the time of receipt or deposit that the contribution was in fact illegal, the treasurer must refund the contribution to the contributor within 30 days of the date on which the illegality is discovered. 11 C.F.R. § 103.3(b)(2).

2. Corporate Facilitation

In addition to prohibiting contributions by foreign nationals, the Act prohibits corporations from making contributions in connection with Federal elections, and prohibits national banks from making contributions in connection with election to any political office. 2 U.S.C. § 441b(a). Further, the Act prohibits any officer or director of any corporation or national bank from consenting to any such contribution. 2 U.S.C. § 441b(a). As used in Section 441b, the term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any office referred to in Section 441b. 2 U.S.C. § 441b(b)(2).

To effectuate this prohibition, corporations and national banks, including officers, directors, or other representatives acting as agents of corporations and national banks, are prohibited from facilitating the making of contributions to candidates or to political committees other than the corporation's separate segregated fund. 11 C.F.R. § 114.2(f). Facilitation means

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using corporate resources or facilities to engage in fundraising activities in connection with any Federal election. *Id.*; see also 11 C.F.R. § 114.2(a)(2) (extending provisions of Part 114 of Title 11, Code of Federal Regulations, to activities of national banks in connection with Federal, state and local elections). Examples of facilitating the making of contributions include, but are not limited to, fundraising activities by corporations which involve 1) officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services; 2) failure to reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture); 3) using a corporate list to solicit contributions in connection with a fundraiser, unless the corporation receives advance payment for the fair market value of the list; 4) using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or 5) providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting or delivering contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions, *see, e.g.* MUR 3672.

Notwithstanding these provisions, Commission regulations also contain certain safe harbors for the use of corporate resources in connection with Federal elections. For example,

employees or shareholders of a corporation may make occasional, isolated, or incidental use of corporate facilities, which generally means activity which does not exceed one hour per week or four hours per month, for individual volunteer activity in connection with a Federal election. Such employees or shareholders are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a).

B. Facts, Allegations, Responses, and Respondents

It is not disputed that on January 9, 1998, Rubén Hinojosa for Congress held a fundraising brunch at the home of Alonzo and Yolanda Cantu in McAllen, Texas, or that President Clinton appeared at the brunch. Those who wished to attend the brunch were requested to contribute \$1,000 to the Hinojosa Committee. The reply card further asked contributors to provide identifying information, including the identifying information the Hinojosa Committee was required to report to the Commission by 2 U.S.C. § 434, as well as the contributors' home and work telephone numbers. In addition, and apparently because of the President's attendance at the fund-raiser, contributors were asked to provide their dates of birth and Social Security numbers, and were told to bring photographic identification to the fund-raiser. The reply card stated that corporate contributions, contributions from individuals under the age of 18, and contributions from non-U.S. citizens were prohibited, and it carried a disclaimer stating that it was "authorized and paid for" by the Hinojosa committee.

According to information from its World Wide Web site, Texas Commerce Bank, N.A., a "wholly-owned subsidiary of The Chase Manhattan Corporation," changed its name to Chase Bank of Texas, N.A. effective January 20, 1998. According to a search of the Federal Deposit Insurance Corporation's database of insured financial institutions, which is also accessible on the

World Wide Web, Chase Bank of Texas, N.A. is a national bank, regulated by the Office of the Comptroller of the Currency, U.S. Department of the Treasury.

Complainant Haughey alleges that a Dan Bautista, whom Haughey identifies as "head of the Hidalgo County chapter of the Republican National Hispanic Assembly," told Haughey that Bautista was contacted by two "Mexican nationals" whom Bautista said told him that they had purchased tickets to the January 9 Hinojosa fund-raiser and that they had done so after being "pressured by employees of Texas Commerce Bank on bank premises." MUR 4710, Complaint at 1. The complaint further alleges that "Other individuals with offices within the bank tower were also offered tickets by employees."¹ *Id.* The complaint does not identify the two Mexican nationals who allegedly purchased tickets to the fund-raiser, much less state whether those persons were lawfully admitted to the United States for permanent residence. The complaint also fails to identify the "other individuals" who were allegedly solicited. However, it provides telephone and beeper numbers and E-mail and physical addresses for Dan Bautista.

The Hinojosa Committee has asserted that it followed the procedures outlined in 11 C.F.R. § 103.3(b) for determining the legality of contributions. The Hinojosa Committee has also asserted that it reexamined its records of the January 9 event and compared contributors' checks with their reply cards, and that based on its review, "[o]n one or two occasions, it contacted donors to verify their citizenship status," but that it received no information suggesting it had received any "impermissible" contributions.

Chase Bank of Texas, N.A. ("the bank") responded that after receiving notification of the complaint in this matter, it asked the CEO of its Rio Grande Valley region to review the

¹ The complaint implies, but does not state, that the alleged solicitations took place at Texas Commerce Bank's McAllen branch.

allegations in the complaint and determine whether there was any evidence to support them. The bank asserted that

[O]ur CEO made inquiries of multiple officers of the bank with responsibilities pertaining to both international and domestic clients to determine whether or not those individuals had any knowledge that the events asserted in [the complaint] occurred. No evidence whatsoever was found that such events did in fact occur.

MUR 4710, Response of Chase Bank of Texas, N.A., at 1-2.

C. Analysis

1. Foreign Nationals

There is insufficient evidence to support a finding of reason to believe with respect to the complaint's allegations of contributions by foreign nationals. The recipient committee has asserted it followed the procedures prescribed in 11 C.F.R. § 103.3 at the time it received contributions in connection with the January 9 fund-raiser. It has also asserted that after it was notified of the complaint, it double-checked the identifying information for each contributor against the information on their contribution checks, and found no indication that it had received any illegal contributions. The bank whose employees are alleged to have solicited the contributions asserts that its internal review showed no evidence that the alleged solicitations took place. More significantly, an examination by this Office of the Hinojosa committee's 1997 Year-End and 1998 Pre-Primary reports revealed no contributions or pattern of contributions that raised any particular suspicions that they were made by foreign nationals. Those reports showed no contributions made by any employees of Texas Commerce Bank, and only one contribution made by any person with an address identical to that of the bank's branch in McAllen; that person, an attorney whose firm is evidently in the same building as the bank, was listed in the *Martindale-Hubbell* legal directory as having been born in the United States. Against these facts

APPROVED BY _____
SIGNED BY _____

and assertions, the complainant repeats a second-hand allegation somebody assertedly told him; but he does not say who the contributors were, how much they contributed, when they made the contributions or who at Texas Commerce Bank pressured them.

In short, the complaint offers virtually no facts to substantiate its allegation. Given the flat denials of the allegations by both the Hinojosa committee and Chase Bank of Texas and the lack of anything in the public record that would bolster the complaint, it would appear that there are no facts on this record that would justify the opening of an investigation. Accordingly, there is no reason to believe that Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A., violated 2 U.S.C. § 441c in connection with the allegations in MUR 4710.

2. Corporate Facilitation

Taken in the light most favorable to the complainant, the complaint's allegations about foreign national contributions and its allegation that "[o]ther individuals within the bank tower were also offered tickets by employees" can be read as allegations that Texas Commerce Bank illegally facilitated the making of contributions to the Hinojosa committee. However, there are no more facts to support the allegation of facilitation by the bank than there are to support the allegation of foreign national contributions. For similar reasons, there is no basis to investigate the facilitation allegation. Accordingly, there is no reason to believe that Chase Bank of Texas, N.A., f/k/a Texas Commerce Bank, N.A., violated 2 U.S.C. § 441b(a) in connection with the allegations in MUR 4710.


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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS 
COMMISSION SECRETARY

DATE: MARCH 18, 1999

SUBJECT: MUR 4710 - First General Counsel's Report
dated March 16, 1999.

The above-captioned document was circulated to the Commission
on Tuesday, March 16, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	XXX
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, March 23, 1999.

Please notify us who will represent your Division before the Commission on this
matter.