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September 17, 1998

**BY FACSIMILE TRANSMISSION
AND REGULAR UNITED STATES MAIL**

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4800; Harvey Gainey

Dear Sir/Madam:

Please be advised that this office represents Harvey Gainey in the above-referenced matter. Attached for your records is a copy of an executed Statement of Designation of Counsel.

We have reviewed the Complaint (the "Complaint") filed by John Anthony La Pietra against the Nick Smith for Congress Committee (the "Committee"). Although the Complaint refers to the Committee as a respondent, apparently, the Federal Election Commission (the "Commission") has initially determined that the Complaint "indicates that [Mr. Gainey] may have violated the Federal Election Campaign Act"

After reviewing and re-reviewing the Complaint, we are unaware of any manner by which Mr. Gainey may have violated the Federal Election Campaign Act. As the Complaint indicates, the Committee's records indicate that Mr. Gainey made a \$1,000 contribution to the Committee on or about December 19, 1997 and an additional \$200 contribution to the Committee on or about February 6, 1998. It is our understanding that these contributions did not designate whether these contributions were to apply to the Committee's 1998 primary election or 1998 general election; therefore, based on the dates of these undesignated contributions, these contributions counted against Mr. Gainey's limit to the Committee for the August 4, 1998 primary election. 11 CFR §110.1(b)(2)(ii).

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However, when the Committee received the second contribution from Mr. Gainey, no one can question that it was the Committee's responsibility to ask Mr. Gainey to redesignate and/or reattribute the second contribution or to otherwise comply with the Commission's regulations. According to 11 CFR §103.3(b)(3), within sixty (60) days after the date of receipt of the contribution, the Committee (not Mr. Gainey) must either (1) receive the redesignation or reattribution; or (2) refund the excessive portion of the contribution. As recognized by the Commission:

"The committee treasurer is the person ultimately responsible for complying with [these] procedures"
Federal Election Commission, Campaign Guide for Congressional Candidates and Committees (CCH) ¶7511, page 10.

It is significant to note that Mr. Gainey did not knowingly make an excessive contribution to the Committee. Since the Committee did not receive Mr. Gainey's redesignation or reattribution within sixty (60) days after the date of receipt of the second contribution, the Committee was required to refund the excessive portion of the contribution back to Mr. Gainey. 11 CFR §103.3(b)(3). Again, the Commission's regulations appropriately place the burden of all requirements on the Committee; contributors are not required to request a refund of the excessive contribution, particularly where, as in this case, Mr. Gainey had absolutely no idea that an excessive contribution was made.

We have done our very best to respond to your September 1, 1998 letter in this matter. We have made a thorough investigation of this matter in an effort to cooperate with the Commission. Once again, we are simply unaware of any violation that could have been committed by Mr. Gainey in this matter. If there is any authority to support a claim that the Federal Election Campaign Act may be violated by a contributor where a contributor unknowingly makes an excessive contribution and the recipient campaign committee fails to comply with the Commission's regulations, please consider this letter as our request for such authority.

**FOSTER, SWIFT,
COLLINS & SMITH, P.C.**

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If the Commission should have any additional questions or require any additional information in this matter, please contact the undersigned.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.



Eric E. Doster

EED/jlk

Attachment

cc w/att: Harvey Gaaney

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09/17/98 10:43 AM

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4800

NAME OF COUNSEL: Eric Doster

FIRM: Foster Swift Collins & Smith

ADDRESS: 313 South Washington Sq.
Lansing, MI 48933

TELEPHONE: (517) 371-8100

FAX: (517) 371-8200

The above-named individual is hereby designated as my counsel
and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

9/15/98
Date

Harvey A. Gainey
Signature

RESPONDENT'S NAME: Harvey Gainey

ADDRESS: 1624 Beard Dr., SE
Grand Rapids, MI 49546

TELEPHONE: HOME _____

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