

DEC 20 1999

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Friends of Maurice Hinchey and ) MUR 4843  
Frank Koenig, as Treasurer )  
 )

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT  
1999 DEC 20 P 1:09

**SUPPLEMENTAL GENERAL COUNSEL'S REPORT**

**I. ACTIONS RECOMMENDED**

This report seeks Commission approval for various reason to believe recommendations which have been modified in a way that is consistent with the Commission's direction at the Executive Session on November 30, 1999.

**II. BACKGROUND**

On November 30, 1999, the Commission discussed the First General Counsel's Report in this matter, which concluded that the statute of limitations had run in August 1997 with respect to the failure by Friends of Maurice Hinchey and Frank Koenig, as treasurer ("the Hinchey Committee") to refund or disgorge certain 1992 contributions from Ansaldo Corporation, Inc. ("Ansaldo") and Besicorp in light of their illegality. *See attached.* The Commission directed this Office to analyze further the recommendations regarding the late refund of contributions. This Office continues to believe that its analysis of these issues in the First General Counsel's Report is correct. Discussion during the Executive Session made clear, however, that there are good arguments for concluding that a fresh refund or disgorgement obligation arose, and that a corresponding statute of limitations started to run, in 1997. While this Office does not believe that there was a consensus reached amongst the Commissioners as to the reasons for the later

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statute of limitations date, there appears to be a sufficient argument to warrant going forward in this matter.<sup>1</sup>

### III. DISCUSSION

Complainant alleges that the Hinchey Committee violated the Act by failing to refund or disgorge the contributions in the name of another made by Ansaldo and by waiting for ten months to refund or disgorge the contributions made in the name of another by Besicorp. The funds that the complaint alleged that the Hinchey Committee failed to return or disgorge within 30 days of discovering that they were received as a result of illegal contributions fall into three distinct categories: the \$40,000 that Ansaldo transferred to Besicorp for use in assisting Hinchey's 1992 candidacy; the \$3000 that Ansaldo paid to reimburse three of its employees for 1992 contributions to the Hinchey Committee; and the \$27,000 that the Hinchey Committee returned approximately ten months after the June 1997 Zinn/Besicorp guilty plea.

On April 8, 1998, almost ten months after Mr. Zinn's and Besicorp's guilty pleas were made public, the Hinchey Committee did belatedly disgorge the \$27,000 it received from Besicorp. The information available to this Office suggests that this \$27,000 was part of the \$40,000 which was transferred from Ansaldo to Besicorp and that Mr. Zinn only passed on to the Hinchey Committee a part of what Ansaldo sent to Besicorp. The disclosure reports filed with the Commission do not indicate that the Hinchey Committee has ever returned or disgorged any of the \$3000 in 1992 contributions it received from the three individuals who acted as "straw donors" for Ansaldo.

Both the Hinchey Committee's response to the complaint in MUR 4543 and the news stories about the Ansaldo plea agreement indicate that these respondents became aware of the

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<sup>1</sup> This Office may recommend that the Commission reevaluate this case if it does not conciliate.

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criminal investigation being conducted by the United States Attorney's Office in mid-1996. Even if the respondents' purported cooperation with the criminal investigation did not provide the Hinchey Committee with knowledge sufficient to identify specific illegal contributions, such knowledge was available by no later than the entry of the guilty plea by Ansaldo in March 1997 and the entry of guilty pleas by Mr. Zinn and Besicorp in June 1997.

Based on the facts set forth above, this Office recommends that the Commission find reason to believe that Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b(a), 441f, and 11 C.F.R. § 103.3(b)(2) by accepting prohibited contributions by virtue of their failure to refund or disgorge the contributions from Ansaldo and failure to refund the Besicorp contributions within thirty days of learning that the contributions were corporate contributions and contributions made in the names of others.<sup>2</sup> This recommendation reflects the Commission's view that the violation was not knowing and willful.

#### **IV. DISCUSSION OF CONCILIATION, DISGORGEMENT AND CIVIL PENALTY**

This Office also recommends that the Commission offer to enter into conciliation with the Hinchey Committee prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement. Attachment 2.

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<sup>2</sup> Although the complaint alleges violations of 11 C.F.R. § 103.3(b)(2) for failing to return specific contributions within 30 days of discovering that the contributions were illegal, the Commission has viewed the actual violation as the underlying act of the Committee's receipt and retention of illegal corporate contributions and contributions made in the name of another. If a committee complies with the procedures for making sufficient inquiries and refunding illegal contributions as described in Section 103.3(b), it will be deemed not to have violated the Act's prohibition on knowing acceptance or receipt of excessive or prohibited contributions.

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## V. RECOMMENDATIONS

For the reasons set forth above, this Office resubmits the Recommendations set forth in the First General Counsel's Report dated November 9, 1999, with a modification to Recommendation Numbers 4 and 6 based on the discussion at the Commission Executive Session of November 30, 1999.<sup>5</sup>

1. Find reason to believe that Ansaldo North America, Inc. knowingly and willfully violated 2 U.S.C. § 441b and § 441f, but take no further action with regard to this respondent and send a letter of admonishment.
2. Find reason to believe that Besicorp Group, Inc. knowingly and willfully violated 2 U.S.C. § 441b and § 441f, but take no further action with regard to this respondent and send a letter of admonishment.
3. Find reason to believe that Michael Zinn knowingly and willfully violated 2 U.S.C. § 441b and § 441f, but take no further action with regard to this respondent and send a letter of admonishment.
4. Find reason to believe that the Friends of the Maurice Hinchey Committee and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b, 441f and 11 C.F.R. § 103.3(b), and enter into conciliation.
5. Find reason to believe that Besicorp Group, Inc. and Michael Zinn, as CEO, violated 2 U.S.C. § 441b by making corporate in-kind contributions to the Friends of Maurice Hinchey, but take no further action with regard to these respondents and send a letter of admonishment.

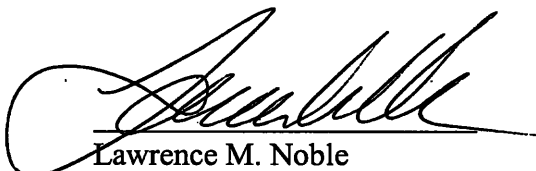
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<sup>5</sup> In light of the Commission's direction at the Executive Session of November 30, 1999, this Office now recommends pre-probable cause conciliation regarding the violations in Recommendations Number 4 and 6. This is because the usual practice is to include all violations in a conciliation agreement once the Commission has determined that conciliation is the best course of action. Thus, it is this Office's belief that it is no longer appropriate to take no further action with respect to the in-kind contributions and Recommendation 6 has been changed accordingly.

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6. Enter into conciliation with the Friends of the Maurice Hinchey Committee and Frank Koenig, as treasurer.
7. Approve the appropriate factual and legal analysis and letters.
8. Approve the attached conciliation agreement.

12/17/99  
Date

  
Lawrence M. Noble  
General Counsel

Attachments:

1. First General Counsel's Report for MUR 4843, dated November 9, 1999
2. Conciliation Agreement
3. Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel *KCS*

**DATE:** December 20, 1999

**SUBJECT:** MUR 4843-Supplemental General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

**SENSITIVE**

☒

**NON-SENSITIVE**

☐

72 Hour TALLY VOTE ☐

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 hour Tally Vote ☒

**DISTRIBUTION**

**COMPLIANCE** ☐

Open/Closed Letters ☐

MUR ☐

DSP ☐

**STATUS SHEETS** ☐

Enforcement ☐

Litigation ☐

PFESP ☐

**RATING SHEETS** ☐

**AUDIT MATTERS** ☐

**LITIGATION** ☐

**ADVISORY OPINIONS** ☐

**REGULATIONS** ☐

**OTHER** ☐

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES  
COMMISSION SECRETARY

DATE: DECEMBER 22, 1999

SUBJECT: MUR 4843 - Supplemental General Counsel's Report  
dated December 17, 1999.

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The above-captioned document was circulated to the Commission  
on Monday, December 20, 1999.

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

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,

January 11, 1999. Please notify us who will represent your Division before the  
Commission on this matter.

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