



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 18, 2000

RE: MUR 4843

David Lenefsky, Esq.
277 Park Avenue, 47th Floor
New York, NY 10172

Dear Mr. Lenefsky:

On November 3, 1998, the Federal Election Commission notified your clients, the Friends of Maurice Hinchey Committee ("the Committee") and Frank Koenig, as Treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information provided by you, the Commission, on January 11, 2000, found that there is reason to believe the Committee and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b and 441f and 11 CFR § 103.3(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable

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cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact April Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures

Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Maurice Hinchey and
Frank Koenig, as Treasurer

MUR: 4843

This matter was generated based on a complaint filed with the Federal Election Commission ("The Commission") by John S. Hicks, Chairman of the Orange County Republican Committee. *See* 2 U.S.C. § 437g(a)(2).

I. THE LAW

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), a corporation may not make contributions in connection with the election of a candidate for federal office, and an officer or director of a corporation is prohibited from consenting to the making of a corporate contribution in connection with the election of a federal candidate. 2 U.S.C. § 441b(a). Similarly, candidates and political committees are prohibited from accepting corporate contributions. 2 U.S.C. § 441b(a).

Corporations are prohibited from making "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services, or anything of value (except a loan of money by a bank in accordance with applicable laws and regulations and in the ordinary course of business) to any candidate, campaign committee or political party or organization, in connection with any federal election." 2 U.S.C. § 441b(b)(2). Corporations also are prohibited from "facilitating the making of contributions" to candidates or political committees. 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.* In this same context, a candidate, political

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committee, or any other person is prohibited from knowingly accepting or receiving any prohibited contribution made or facilitated by a corporation. 11 C.F.R. § 114.2(d).

The Act also prohibits: (1) making a contribution in the name of another, (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). This prohibition also applies to any person who provides money to effect contributions in the names of others, 11 C.F.R. § 110.4(b)(2), and to incorporated or unincorporated entities who give money to another to effect a contribution made in the other person's name.

The treasurer of a political committee is responsible for examining all contributions received by the political committee for evidence of illegality. 11 C.F.R. § 103.3(b)(1). If any contributions as to which there are genuine questions of legality at the time of receipt are deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. 11 C.F.R. § 103.3(b)(1). If the treasurer determines that at the time a contribution was received and deposited, it did not appear to be made in the name of another or exceed contribution limits, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. 11 C.F.R. § 103.3(b)(2).

II. FACTS

Maurice Hinchey, who represents the 26th Congressional District of New York, was first elected to Congress in 1992 and was re-elected in 1994, 1996 and 1998. Friends of Maurice Hinchey ("Hinchey Committee") was Mr. Hinchey's principal campaign committee during each of these election cycles. During 1992, Michael F. Zinn was the President, Chief Executive

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Officer and majority shareholder of Besicorp, a New York-based corporation involved in building power plants. During 1992, Mr. Zinn and Besicorp were involved in various business ventures with Ansaldo North America, Inc. ("Ansaldo"). Mr. Zinn also served as the "Finance Chairman" of Mr. Hinchey's 1992 campaign.¹

Allegations that Besicorp and Mr. Zinn may have made illegal contributions to Mr. Hinchey's 1992 campaign activities were first presented to the Commission in a complaint, designated as MUR 4543, which was received on October 28, 1996. The MUR 4543 complaint alleged that Besicorp had encouraged its employees to make contributions to the Hinchey Committee, and had issued bonuses to reimburse employees for at least \$17,900 in contributions to the Hinchey Committee. The MUR 4543 complaint also alleged that Besicorp had provided the Hinchey Committee with illegal in-kind contributions in the form of employee time spent on campaign business and the use of its facilities.

In its November 14, 1996 response to this earlier complaint, the Hinchey Committee reported the allegations were the subject of an ongoing investigation by the United States Attorney's Office for the Southern District of New York, and represented that it was cooperating with the government's criminal investigation. The Hinchey Committee also asserted that it had "no information either to affirm or deny the allegations made against Besicorp."

On March 21, 1997, Ansaldo pleaded guilty to two misdemeanor counts of violating the Act in connection with \$43,000 in illegal contributions that it made to the Hinchey Committee during the 1992 campaign. Ansaldo admitted to making \$40,000 in illegal contributions to the

¹ The information this Office has obtained regarding Mr. Zinn's relationship with the Hinchey Committee is based almost entirely on the 1997 criminal indictment of Mr. Zinn and Besicorp. See May 15, 1997 Indictment (attached as Exhibit 1). In later criminal plea agreements, Mr. Zinn agreed not to contest any of the facts set forth in the indictment.

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Hinchey Committee via payments it made, at the direction of Mr. Zinn, to Besicorp. Ansaldo also admitted that, acting at the request of Mr. Zinn and through its Ansaldo Industria of America, Inc. subsidiary ("Ansaldo Industria"), it reimbursed individual employees of Ansaldo Industria for \$3000 in contributions they sent to Mr. Hinchey's campaign. *See Factual Discussion in May 15, 1997 Indictment of Michael Zinn and Besicorp Group at Paragraphs 13, 17-19 and 21-24.* Ansaldo was fined the maximum penalty of \$200,000 for the acts covered by its March 1997 plea agreement.

On May 15, 1997, Michael Zinn and Besicorp were indicted on charges that they had conspired to defraud the United States and the Commission in connection with enforcement of the Act, and also to have caused the Hinchey Committee to make false statements on disclosure reports filed with the Commission. *See May 15, 1997 Indictment.*

As background for the offenses with which Mr. Zinn and Besicorp were charged, the indictment alleged that: a) commencing in or about July 1992, Michael Zinn was the finance chairman of the Hinchey campaign; b) the finance operation of the Hinchey campaign was conducted, in part, out of Besicorp's corporate headquarters; c) meetings of the Hinchey campaign finance committee were regularly conducted at a conference room in Besicorp's headquarters; d) phone and mail solicitations to the Hinchey campaign were organized and carried on from Besicorp's headquarters; e) contributions to the Hinchey campaign were regularly received, tabulated and recorded at Besicorp's headquarters; and f) from July through November 1992, a number of Besicorp employees devoted a significant portion of their normal work day to work on the Hinchey campaign. *Id.* at Paragraphs 14-16.

The indictment also alleged that Zinn and Besicorp reimbursed various Besicorp employees, relatives of Besicorp employees and an employee of another company controlled by

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Zinn for \$27,000 in campaign contributions to the Hinchey Committee. *Id.* at Paragraph 20. The indictment also alleged that Mr. Zinn had solicited Ansaldo's president to make a corporate contribution to the Hinchey Committee, and that Ansaldo subsequently made \$40,000 in secret payments to the Hinchey campaign through Besicorp and Mr. Zinn. *Id.* at Paragraphs 17-19. Finally, the indictment alleged that Mr. Zinn solicited an officer of an Ansaldo subsidiary to cause his employees to make contributions to the Hinchey campaign and to reimburse such employees for those contributions, and that Ansaldo subsequently reimbursed its employees for \$3000 in contributions to the Hinchey Committee. *Id.* at Paragraphs 21-24.

On June 19, 1997, Michael Zinn and Besicorp each pled guilty to one count of aiding and abetting the making of false statements to the Commission. As part of the plea agreement, Besicorp and Zinn agreed not to contest any of the allegations in the May 15, 1997 indictment. In October 1997, Michael Zinn was sentenced to six months in prison and fined \$36,673 for the acts covered by the June 1997 plea agreement. Besicorp was fined \$36,000 for its role in the acts covered by its June 1997 plea agreement.

On April 8, 1998, the Hinchey Committee sent the U.S. Treasury a check for \$27,000 to disgorge the amount that had been illegally contributed to it in 1992 by 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.

III. COMPLAINT AND RESPONSE

The October 28, 1998 complaint in this MUR alleges that the Hinchey Committee knowingly and willfully violated 11 C.F.R. § 103.3(b)(2) by failing to return any of the \$43,000 in illegal contributions that were the subject of Ansaldo's March 1997 plea agreement. The

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complaint also alleges that the Hinchey Committee knowingly and willfully violated 11 C.F.R. § 103.3(b)(2) by waiting approximately ten months to return or disgorge the \$27,000 in illegal contributions that were the subject of the June 1997 Besicorp and Michael Zinn plea agreements.

The Hinchey Committee's response states that the \$27,000 it returned to the U.S. Treasury reflected the entire amount of the illegal contributions it received from Besicorp. The response argues that the \$43,000 figure referred to in the Ansaldo plea agreement relates to the funds that Ansaldo transferred to Besicorp, and that the Hinchey Committee cannot be held responsible for the return of funds it never received.² The response does not address the fact that the Hinchey Committee apparently received \$3000 in contributions for which Ansaldo reimbursed specific individual employees, and that it does not appear to have refunded these funds.

IV. ANALYSIS

A. Violations Stemming from the Reimbursement Schemes

Based on facts set forth in the May 15, 1997 indictment of Besicorp and Mr. Zinn, as well as the guilty pleas discussed above, it appears that Ansaldo, Besicorp and Mr. Zinn made and arranged prohibited corporate contributions and contributions in the name of another to the Hinchey Committee. Specifically, Ansaldo admits to reimbursing employees of its subsidiary for \$3000 in contributions to the Hinchey Committee. Further, Besicorp admits to reimbursing employees, employees' relatives and an employee of another company controlled by Mr. Zinn for

² The information available to the Commission suggests that the \$40,000 which was transferred from Ansaldo to Besicorp and Mr. Zinn either was not passed on to the Hinchey Committee at all or that only a part was passed on through the \$27,000 in contributions from Besicorp that the Hinchey Committee later disgorged. Thus, it appears that the only additional amount that the Hinchey Committee still retains is the \$3000 that respondents received from Ansaldo through the employee straw donors.

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\$27,000 in contributions to the Hinchey Committee. *See* Indictment at Paragraphs 20-24.

Further, Mr. Zinn admits to having solicited, directed and/or arranged the reimbursements and prohibited contributions by Ansaldo and Besicorp. *Id.*

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

The Hinchey Committee had an obligation to refund the contributions from Ansaldo and Besicorp within thirty days of learning that they were corporate contributions, and contributions made in the name of another. Therefore, the Commission finds reason to believe that Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. §§ 441b, 441f, and 11 C.F.R. § 103.3(b)(2).

B. Violations Stemming from In-Kind Corporate Contributions

Based on facts set forth in Paragraphs 15-16 of the May 15, 1997 indictment of Besicorp and Mr. Zinn, it appears that the Hinchey Committee may have violated 2 U.S.C. §441b by accepting illegal corporate in-kind contributions from Besicorp and Mr. Zinn, its President and CEO. Specifically, the indictment alleges that Besicorp provided the Hinchey Committee with use of its facilities and resources in that a) the finance operation of the Hinchey campaign was conducted, in part, out of Besicorp's corporate headquarters; b) meetings of the Hinchey campaign finance committee were regularly conducted at a conference room in Besicorp's

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headquarters; c) phone and mail solicitations to the Hinchey campaign were organized and carried on from Besicorp's headquarters; d) contributions to the Hinchey campaign were regularly received, tabulated and recorded at Besicorp's headquarters; and e) from July through November 1992, a number of Besicorp employees devoted a significant portion of their normal work day to work on the Hinchey campaign. *Id.* at Paragraphs 15-16.

It appears that the Hinchey Committee did not reimburse Besicorp for the use of its facilities and the time that Besicorp employees spent on fundraising activities. Therefore, the Commission finds reason to believe that Friends of Maurice Hinchey and Frank Koenig, as treasurer, violated 2 U.S.C. § 441b by accepting prohibited corporate in-kind contributions from Besicorp.

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