

JUL 19 2000

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

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2000 JUL 19 P 4: 24

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 4920

DATE COMPLAINT FILED: August 25, 1999

DATE OF NOTIFICATION: September 1, 1999

DATE ACTIVATED: April 25, 2000

EXPIRATION OF STATUE OF

LIMITATIONS: June 1, 2001

STAFF MEMBER: Tamara Kapper

COMPLAINANT: Gary L. Arneson

RESPONDENTS: Kind for Congress Committee and Mary JoAnn Werner,  
as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(d)  
11 C.F.R. § 110.11(a)(1), (5) and (6)

INTERNAL REPORTS CHECKED: FEC Indices and Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

This matter originated as a complaint submitted by Gary L. Arneson ("Complainant"), who alleges that the Kind for Congress Committee and Mary JoAnn Werner, as treasurer ("Kind Committee"), the principal campaign committee for U.S. Representative Ron Kind from the 3<sup>rd</sup> Congressional District of Wisconsin, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on campaign advertising that expressly advocated Rep. Kind's candidacy. The campaign advertising at issue is a large mural painted on the side of a building owned by Representative Kind, which was authorized and paid for by the Kind Committee.

## II. ACTUAL AND LEGAL ANALYSIS

### A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), states that when an expenditure is made

for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication-

if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee[.]

2 U.S.C. § 441d(a).

According to 11 C.F.R. § 110.11(a)(1) the disclaimer shall be "presented in a clear and conspicuous manner to give the reader adequate notice of the identity of the persons who paid for and, where required, who authorized the communication." Exceptions to the disclaimer requirements include "bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed," 11 C.F.R. § 110.11(a)(6)(i), and advertisements "of such a nature that the inclusion of a disclaimer would be impractical" such as skywriting, watertowers or wearing apparel. 11 C.F.R. § 110.11(a)(6)(ii).

### B. The Facts

The complainant provided two (2) copies of photographs taken of the mural, and a copy of a newspaper article with a photograph of the mural in the background that appeared in the

*La Crosse Tribune* on January 26, 1997. The large mural is painted on the side of a building located in downtown La Crosse, Wisconsin. The mural promotes Ron Kind's candidacy by expressly advocating his election for office by stating "Ron Kind for Congress." Attachment 1.

**C. Legal Analysis**

In response to the complaint, Ms. Werner explains that the sign was painted on the side of the building when Rep. Kind first ran for the U.S. House of Representatives in 1996.<sup>1</sup> She asserts that it originally contained a disclaimer that said "Paid for by Mary Jo Murphy, Treasurer, Kind for Congress Committee." Attachment 2. Ms. Werner goes on to say that a few months after the sign was painted on the building, it was vandalized, and in the process of removing the graffiti the disclaimer was also removed. Ms. Werner states that she was unaware that the graffiti removal had eliminated the disclaimer as well. However, since she received the Commission's letter dated September 1, 1999, notifying her of the complaint, "the 'paid for by ...' portion of the sign has been repainted." *Id.*

It is unclear exactly how long the mural was on the side of the building without a disclaimer, but it appears that the length of time was at least three (3) years. This estimation is based on information provided by both the complainant and the Respondents. Respondents indicate that the campaign advertisement was painted in connection with the 1996 Federal election, and that the disclaimer was removed (along with the graffiti) a couple of months later.<sup>2</sup>

<sup>1</sup> Rep. Kind first ran for Federal office in 1996, was re-elected to a second term in 1998 and is currently seeking a third term.

<sup>2</sup> Respondents have not provided us with the exact date the mural was painted on the building, and a review of the Kind Committee's disclosure reports on file with the Commission does not specifically itemize the cost of the mural. The Kind Committee disclosed the receipt and disbursement of an in-kind contribution from an individual, Greta Lake, on June 1, 1996, for \$283.00 for the purpose of "Paints for Campaign." Attachment 3.

Respondents indicate that the disclaimer was not repainted on the mural until September 1999. Over the course of that time, Rep. Kind participated in two political campaigns for Federal office (1996 and 1998) and had the benefit of the political campaign advertisement for at least two primary and general elections. In addition, the mural was located in a high visibility, well traveled location, in downtown La Crosse, Wisconsin.

According to the Act, this type of general public political advertising shall clearly state that the communication has been paid by the candidate's authorized committee. For approximately 3 years there was no disclaimer on the Kind Committee campaign advertisement, and the general public had no knowledge of who paid for and/or authorized the mural. In addition, it is unclear why the Kind Committee failed to notice that the disclaimer was missing from such a large advertisement for 3 years. Therefore, this Office recommends that the Commission find reason to believe that Kind for Congress Committee and Mary JoAnn Werner, as treasurer, violated 2 U.S.C. § 441d(a).

### **III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

In addition to recommending that the Commission find reason to believe that the Kind Committee violated 2 U.S.C. § 441d(a), this Office also recommends that the Commission enter into conciliation with the Kind Committee prior to finding probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement. Attachment 4.

IV. RECOMMENDATIONS


1. Find reason to believe Kind for Congress and Mary JoAnn Werner, as treasurer, violated 2 U.S.C. § 441d(a), and enter into conciliation prior to a finding of probable cause to believe.
2. Approve the proposed Factual and Legal Analysis and the conciliation agreement.
3. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

Date

7/18/00

BY:

  
Lois G. Lerner  
Associate General Counsel

Attachments:

1. Newspaper Article dated 1/26/97
2. Response to Complaint dated 9/13/99
3. Copies of Schedule A and B from Kind Committee's Report
4. Proposed Conciliation Agreement
5. Proposed Factual and Legal Analysis

SCHEDULE A

ITL...IZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

PAGE 2 OF 8  
FOR LINE NUMBER 111(a)(1)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

KIND FOR CONGRESS COMMITTEE

<p>A. Full Name, Mailing Address and ZIP Code</p> <p>Grete Laka Rt 1, Box 693 Stadara, WI 54658</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 303.00</p>	<p>Date (month, day, year)</p> <p>6/1/96</p>	<p>Amount of Each Receipt This Period</p> <p>283.00</p> <p>Contribution In - Kind</p>
<p>B. Full Name, Mailing Address and ZIP Code</p> <p>Richard Boyer, M.D. 7210 N. Beach Drive Milwaukee, WI 53317</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 250.00</p>	<p>Date (month, day, year)</p> <p>6/15/96</p>	<p>Amount of Each Receipt This Period</p> <p>250.00</p> <p>Contribution In - Kind</p>
<p>C. Full Name, Mailing Address and ZIP Code</p> <p>Terry Collins 1710 East Street La Crosse, WI 54601</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 200.00</p>	<p>Date (month, day, year)</p> <p>6/1/96</p>	<p>Amount of Each Receipt This Period</p> <p>200.00</p> <p>Contribution In - Kind</p>
<p>D. Full Name, Mailing Address and ZIP Code</p> <p>Benjamin Chang 420 E. 63rd Street, No. 2C New York, New York 10021</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 200.00</p>	<p>Date (month, day, year)</p> <p>4/2/96</p>	<p>Amount of Each Receipt This Period</p> <p>200.00</p>
<p>E. Full Name, Mailing Address and ZIP Code</p> <p>Lisa A. S. Menish 248 Carlton Ave, Apt #1 Brooklyn, New York 11205</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 200.00</p>	<p>Date (month, day, year)</p> <p>4/11/96</p>	<p>Amount of Each Receipt This Period</p> <p>200.00</p>
<p>F. Full Name, Mailing Address and ZIP Code</p> <p>Terry Lierman 6301 Mountain Branch Ct Bethesda, MD 20817</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 250.00</p>	<p>Date (month, day, year)</p> <p>4/11/96</p>	<p>Amount of Each Receipt This Period</p> <p>250.00</p>
<p>G. Full Name, Mailing Address and ZIP Code</p> <p>Donald W. Layden Jr. 6324 Washington Circle Wauwatosa, WI 53213</p> <p>Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):</p>	<p>Name of Employer</p> <p>Occupation</p> <p>Aggregate Year-to-Date &gt; \$ 500.00</p>	<p>Date (month, day, year)</p> <p>4/24/96</p>	<p>Amount of Each Receipt This Period</p> <p>500.00</p>

SUBTOTAL of Receipts This Page (optional)

1883.00

TOTAL This Period (last page this line number only)

**SCHEDULE B**

**ITEMIZED DISBURSEMENTS**

Use separate schedule(s)  
for each category of the  
Detailed Summary Page

PAGE 3 OF 3  
FOR LINE NUMBER  
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Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in full)

**KIND FOR CONGRESS COMMITTEE**

A. Full Name, Mailing Address and ZIP Code <b>MCSSR</b> <b>2826 West 43rd Street</b> <b>Mpls, MN 55410</b>	Purpose of Disbursement <b>Campaign Strategy Consulting</b> <b>Phone House Disbursement</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/18/96</b>	Amount of Each Disbursement This Period <b>1089.47</b>
B. Full Name, Mailing Address and ZIP Code <b>Gyuta Lake</b> <b>Rt 1, Box 693</b> <b>Stoughton, WI 54658</b>	Purpose of Disbursement <b>Points for Campaign Contribution in Kind</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/1/96</b>	Amount of Each Disbursement This Period <b>283.00</b>
C. Full Name, Mailing Address and ZIP Code <b>Richard Boxer, M.D.</b> <b>7310 N. Beach Drive</b> <b>Milwaukee, WI 53217</b>	Purpose of Disbursement <b>Expenses, Food for Fundraising Contribution - in-kind</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/13/96</b>	Amount of Each Disbursement This Period <b>250.00</b>
D. Full Name, Mailing Address and ZIP Code <b>Ronald Kint</b> <b>219 Pearl St</b> <b>La Crosse, WI 54601</b>	Purpose of Disbursement <b>Whistle for Campaign Headquarters - Contribution in Kind</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/15/96</b>	Amount of Each Disbursement This Period <b>120.00</b>
E. Full Name, Mailing Address and ZIP Code <b>Ronald Kint</b> <b>219 Pearl Street</b> <b>La Crosse, WI 54601</b>	Purpose of Disbursement <b>Hot House - Washington, D.C. for</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>4/11/96</b>	Amount of Each Disbursement This Period <b>536.00</b>
F. Full Name, Mailing Address and ZIP Code <b>Ronald Kint</b> <b>219 Pearl Street</b> <b>La Crosse, WI 54601</b>	Purpose of Disbursement <b>Contribution in-kind</b> <b>Phone Long Distance</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/27/96</b>	Amount of Each Disbursement This Period <b>783.19</b>
G. Full Name, Mailing Address and ZIP Code <b>Ronald Kint</b> <b>219 Pearl Street</b> <b>La Crosse, WI 54601</b>	Purpose of Disbursement <b>Rent - Campaign Headquarters</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>6/1/96</b>	Amount of Each Disbursement This Period <b>500.00</b>
H. Full Name, Mailing Address and ZIP Code <b>NCEC</b> <b>National Committee for an Effective Congress</b> <b>10 East 57th Street</b> <b>New York, New York 10016</b>	Purpose of Disbursement <b>Contribution in Kind</b> <b>Electoral Training</b> Disbursement for <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year) <b>4/11/96</b>	Amount of Each Disbursement This Period <b>2500.00</b>
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement  Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month, day, year)	Amount of Each Disbursement This Period

SUBTOTAL of Disbursements This Page (optional)

**4061.66**

TOTAL This Period (last page this line number only)

**26791.73**



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: July 19, 2000

SUBJECT: 4920-First 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 ☐

### DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

☐

MUR

☐

DSP

☐

STATUS SHEETS

☐

Enforcement

☐

Litigation

☐

PFESP

☐

RATING SHEETS

☐

AUDIT MATTERS

☐

LITIGATION

☐

ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

☐