



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Audit Referral 00-02

January 24, 2000

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR *JAP*

FROM: ROBERT J. COSTA *RC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: DEAR FOR CONGRESS, INC. --- REFERRAL MATTERS

On January 13, 2000, the Commission approved the audit report on Dear For Congress, Inc. The audit report was released to the public on January 21, 2000. In accordance with the Commission approved materially thresholds, the attached findings from the audit report are being referred to your office.

Finding II.B. - Apparent Excessive Contributions
Finding II.E. - Filing of 48 Hour Notices
Finding II.G - Money Order Patterns

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Mary Moss or Tom Nurthen at 694-1200.

Attachments:

Finding II.B. - Apparent Excessive Contributions, pages 3-7.
Finding II.E. - Filing of 48 Hour Notices, pages 10-11.
Finding II.G. - Money Order Patterns, pages 11-13.

B. APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Codes states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes all in-kind contributions.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Section 110.1(b)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, that if a candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.1(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3) as appropriate.

Section 110.1(b)(5) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1). A contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request a refund of the contribution and within 60 days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a signed redesignation of the contribution for another election.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person and informs the contributor that he or she may request a return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within 60 days from the date of the treasurer's receipt of the

contribution, the contributors provide a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(k)(3)(ii)(B)(5) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee does not retain the written records concerning redesignations or reattributions, the redesignation or reattribution shall not be effective and the original designation or attribution shall control.

The Audit staff's review of contributions, although limited by the lack of any formal aggregation system or receipts database, identified 511 apparent excessive contributions from 325 individuals and 2 political committees, totaling \$563,913. The Audit staff identified certain patterns which accounted for the majority of the excessive contributions:

Sole Account Holders

In many instances contributions in the amount of \$2,000 were made by check drawn on an account solely held by an individual. The Committee disclosed these contributions as being designated \$1,000 to the primary election and \$1,000 to the general election. In other instances (other than a \$2,000 check), contributions aggregating greater than \$1,000 were disclosed as being designated to both the primary and general election. However, there was no documentation made available for review in support of such designations.

Joint Account Holders

In many instances contributions in the amount of \$2,000 or greater were made by check drawn on a joint account. Only one of the account holder's signatures appeared on the check. In the case of a \$2,000 check, the Committee disclosed this contribution as being attributed \$1,000 to each account holder for the primary election. In the case of a \$4,000 check the Committee disclosed these contributions as being attributed \$1,000 to each account holder and designated for the primary election, and attributed \$1,000 to each account holder and designated for the general election. In other instances (other than a \$4,000 check), contributions aggregating greater than \$2,000 from either joint or solely owned accounts were attributed to individuals with the same surname and designated to both the primary and/or general elections. Again, there was no documentation made available for review in support of any reattribution or redesignation.

The Audit staff did note that in a few instances contributors designated their contribution to the general election. The memo line of the check was annotated (by the contributor) "general election." It should be noted that the Candidate failed to obtain his party's nomination in the primary election. Therefore, the Candidate was not a candidate in

party's nomination in the primary election. Therefore, the Candidate was not a candidate in the general election. The amount of any contributions designated for the general election should have been refunded to the contributors.

Further, the Audit staff reviewed approximately 20 solicitation devices used by the Committee. One of the solicitations contained language that "a couple may contribute \$2,000." However, the solicitation did not explain that both contributors must either sign the check or provide a signed and dated statement concerning the portion being contributed by each individual.

Finally, the Committee did not deposit excessive contributions into a separate account, nor maintain sufficient funds to refund these contributions. The Audit staff determined that the Committee's cash balance as of September 30, 1998 was \$132,627 and was not sufficient to refund all outstanding excessive contributions.

On July 15, 1999, the Audit staff discussed this matter with the Committee Treasurer at the exit conference and presented a detailed schedule of the excessive contributions. Although it is apparent that the Committee did not maintain any signed reattribution letters, the Treasurer stated that Committee fundraisers were aware of the contribution limitation and immediately obtained reattribution letters from each contributor(s) at the time the contributions were made and that those letters were either lost or destroyed after the Candidate's primary election effort failed. With respect to contributions being designated to the general election, the Treasurer stated that the Committee to the best of his knowledge did not solicit contributions for the general election. He further stated that he believed that upon receipt of a contribution greater than \$1,000 from an single account holder (greater than \$2,000 from a joint account) data entry personnel immediately split the contribution between the primary and general elections. Finally, the Treasurer stated he was in the process of refunding all contributions greater than \$2,000.³

Although requested, the Treasurer did not provide copies of the refund checks issued in calendar year 1999, during the response period available to the Committee subsequent to the exit conference. However, the Treasurer did file the July 31, 1999 mid-year report. That report discloses cash on hand at January 1, 1999 of \$78,451, total receipts for the period of \$101,596, total disbursements for the period of \$300,878 (all contribution refunds) and ending cash at June 30, 1999 of <\$120,831>. When questioned, the Treasurer stated that refund checks were written but not mailed until the Committee was able to secure additional contributions to cover the refund checks.⁴

³ The Treasurer stated during the exit conference that he did not consider contributions in the amount of \$2,000 made by checks drawn on joint checking accounts to be excessive even though only one signature was present in the Committee's records.

⁴ Although calendar year 1999 was not within the scope of our audit, a cursory review of contributions disclosed revealed that certain contributors were already included on our schedule of excessive contributions. When questioned, the Treasurer stated he thought that since the contributions were made in calendar year 1999, contributors could give an additional \$1,000 [for the 1998 primary election].

In the interim audit report, the Audit staff recommended that the Committee provide evidence and/or documentation that demonstrated the contributions were not excessive. Absent such evidence, the Committee was to refund the excessive contributions and provide evidence of such refunds (copies of the front and back of the negotiated refund checks). If funds were not available to make the necessary refunds, the Audit staff recommended that the excessive contributions be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds. Further, it was recommended that the Treasurer review all contributions received in 1999 to identify any additional excessive contributions and take appropriate action.

In response to the interim audit report, Counsel for the Committee (Counsel) restated text from the interim audit report in an effort to demonstrate that the Committee attempted to comply with the broad provisions of the Act, but failed to grasp fully its more detailed provisions. With respect to the contribution limitation, Counsel stated "While the Committee's staff and volunteers understood the practical rule that a couple together could contribute up to \$4,000 for a candidate's effort to seek federal office, they did not grasp the series of technical and procedural requirements to which a committee must adhere in order to raise such amounts".

Finally, Counsel stated the Committee has made refunds to 107 contributors, totaling \$275,120, has reviewed its records to identify other contributors to whom refunds are required, and, will disclose pending refunds as debts on Schedule D

The Audit staff reviewed all refund checks made available by the Committee. Several refunds were made to individual/entities that were: 1) not identified by the Audit staff as making excessive contributions and 2) for amounts larger than the amount identified as excessive. As a result, the Audit staff applied refunds to 80 contributors totaling \$254,550. With respect to the remaining 247 contributors, whose excessive contributions totaled \$309,363, the Committee did not disclose as debts the amount of refunds due the contributors on amended Schedules D, as recommended.

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E. FILING OF 48 HOUR NOTICES

Section 434(a)(6) of Title 2 of the United States Code requires that each treasurer of the principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

The Audit staff reviewed all contributions greater than or equal to \$1,000 with check dates on or after August 27, 1998 and deposit tickets dated on or before September 12,

that required 48 hour notices. The Committee did not file notices for 4 contributions, totaling \$7,000. For the remaining \$70,500, notices were filed, albeit untimely.

At the exit conference, the Committee was provided with a schedule of these items. The Treasurer stated he would review this matter.

In the interim audit report, the Audit staff recommended that the Committee submit evidence that the four required notices were filed or submit any written comments it considered relevant.

In response to the interim audit report, Counsel merely makes reference to this matter as evidence of the Committee's broad efforts toward compliance with the Act.

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G. MONEY ORDER PATTERNS

Section 110.4 (b)(1) and (2) of Title 11 of the Code of Federal Regulations states, in part, no person shall make a contribution in the name of another; knowingly permit his or her name to be used to effect that contribution; knowingly help or assist any person in making a contribution in the name of another; or knowingly accept a contribution made by one person in the name of another. Examples of *contributions in the name of another* include

include - giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made.

During receipt testing, the Audit staff noted 63 money orders totaling \$50,150. The money orders were issued by several entities, including the U.S. Postal Service, Travelers Express, Chase, Dime Savings Bank, Chase Personal, and Citibank. The money orders were within various size groups of consecutive numbers. For the most part, the named individuals do not appear to be related. For example, eight consecutively numbered money orders, all dated April 7, 1998, all in the amount of \$1,000, were received from individuals with different surnames.

With the exception of one series of money orders, the Committee, for the most part, did not disclose a contributor's occupation and name of employer. However, the occupation and name of employer for three contributors, who each contributed \$1,000 via six consecutively numbered \$500 money orders, was listed as Executive/ Essex Gallery Ltd.

The only other point of interest with respect to information disclosed concerned the inconsistencies between the actual dates of the money orders and the receipt dates related thereto on Schedule A. Three consecutively numbered \$1,000 money orders, dated January 23, 1998, were disclosed as being received on December 31, 1997. Two consecutively numbered \$1,000 money orders, dated April 6, 1998, were disclosed on March 31, 1998. Six consecutively numbered \$500 money orders, dated April 7, 1998, were disclosed on March 31, 1998. Finally, eight consecutively numbered \$1,000 money orders, dated April 7, 1998, were disclosed on either January 19, 1998 or January 20, 1998. We were not able to ascertain the reason(s) for the discrepancies.

The Committee Treasurer was provided schedules of the money orders in question during the exit conference. The Treasurer related it is possible that the contributors worked at the same companies but did not have checking accounts.

In the interim audit report, the Audit staff recommended that the Committee obtain a signed and dated statement from each of the individuals, identifying the source of the funds used to purchase the money orders.

In response to the interim audit report, Counsel offers the following:

[T]he Audit Staff draws the inference that the funds contributed were other than the contributors' own. As a threshold matter, there is nothing inherently inappropriate or suspect about contributions made through money order. Commission regulations place money orders squarely alongside checks as varieties of "written instruments" through which donors may contribute.....

A review of the "Schedule of Money Orders" attached to the Interim Report demonstrates little cause for concern. Several of the money orders listed by the Audit Staff come only in pairs or even one at a time. (see Interim Audit Report, Attachment 2.) Even when some are shown to have given at the same time, there is no prima facie evidence of contributions in the name of another. Rather, the evidence suggests only concerted political action. Nevertheless, we are including signed statements from a large number of the individuals who contributed via money order attesting to the fact that their contributions came from personal funds.

The Audit staff does not suggest that contributions cannot be made with money orders. It appears Counsel has concluded that the money orders in question demonstrated little cause for concern since several of the money orders listed come only in pairs or even one at a time. Such conclusion is misplaced. It should be noted that of the 63 money orders addressed only 13 were part of a pair or single issue. However, the serial numbers of these "single" money orders were close to other series of consecutively numbered money orders.

Further, the Committee provided signed statements from 32 contributors attesting that the contribution was made from their personal funds. No additional information was provided with respect to the remaining \$25,750 in contributions made in the form of money orders.