



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1999

MEMORANDUM

Audit Referral 99-10

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JAMES PEHRKON  
STAFF DIRECTOR

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

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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**SUBJECT:** KEMP FOR VICE PRESIDENT - MATTERS REFERABLE TO  
THE OFFICE OF GENERAL COUNSEL

On May 13, 1999, the Commission approved the Final Audit Report on Kemp for Vice President. The audit report was released to the public on June 30, 1999. One finding is being referred to your office:

II.A. Contributions Received to Retire Primary Debt

Should you have any questions regarding these matters, please contact Rhonda Simmons or Joe Stoltz at 694-1200. Workpapers are available for your review if necessary.

Attachments as stated

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## II. AUDIT FINDINGS AND RECOMMENDATIONS

### A. **CONTRIBUTIONS RECEIVED TO RETIRE PRIMARY DEBT**

Section 110.1(b)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, a contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a). If the contribution is deposited, within sixty days from the date of the treasurer's receipt, the treasurer shall take the following action, as appropriate:

- Refund the contribution using a committee check or draft; or,
- Obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.1(b)(5).

If the candidate is not a candidate in the general election, all contributions made to the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.1(b)(5)<sup>2</sup>.

Section 110.1(b)(3)(ii) of Title 11 of the Code of Federal Regulations states in part, that in order to determine whether there are net debts outstanding from a particular election, the treasurer of the candidate's authorized committee shall calculate net debts outstanding as of the date of the election. For purposes of this section, net debts outstanding means the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election and, if the candidate's authorized committee terminates or if the candidate will not be a candidate for the next election, estimated necessary costs associated with termination of political activity, such as the costs of complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rentals, staff salaries and office supplies; less, available cash on hand and amounts owed to the committee

Section 110.1(b)(3)(iii) of Title 11 of the Code of Federal Regulations states in relevant part, that the amount of net debts outstanding shall be adjusted as additional funds are received and expenditures are made.

<sup>2</sup> Although Secretary Kemp was a candidate for the office of Vice President in a general election, pursuant to § 9003.2(a)(2), it is impermissible to accept contributions other than for a legal and accounting compliance fund.

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Section 113.2(c) of Title 11 of the Code of Federal Regulations states that excess campaign funds and funds donated may be transferred without limit to any national, State, or local committee of any political party.

The Audit staff prepared a net debt analysis for KVP based on disbursements of \$395,547<sup>3</sup> and receipts of \$500,215. It was determined that sufficient funds to pay all obligations had been raised by September 30, 1996. After that time, primarily during the months of October and November KVP received additional contributions totaling \$104,668. Pursuant to §110.1(b)(3), KVP should have refunded these contributions or had them redesignated for another election. On October 31, 1996, KVP transferred \$100,000 to the National Republican Senatorial Committee (NRSC), describing it as a transfer of excess funds.

The Audit staff discussed this issue with a Committee representative on several occasions. During those meetings, the Audit staff was told that the treasurer had not kept track of KVP's debt position and that no workpapers were available for review.

At an end of fieldwork conference on April 21, 1998 KVP's legal counsel stated that although workpapers were not prepared, the treasurer had in fact kept a continuous running balance of KVP's debt position. He further stated that due to estimates that continued to come in, he was uncertain how much money KVP would need. Consequently, KVP continued to deposit contributions through November 18, 1996. KVP made no comments as to why contributions were not refunded or redesignated.

It is the Audit staff's opinion, based upon the financial records available, that KVP was or should have been aware of its cash position. However, it appears to have continued to raise funds without consideration of the limitations imposed by §110.1(b)(3). KVP's October 15 Quarterly Report, (7/29/96-9/30/96) signed by its treasurer, reflects a closing cash on hand of \$109,474 and debts and obligations owed by KVP of \$45,722. According to this report, KVP had a surplus of \$63,752. The Pre-General election report (10/1/96-10/16/96), showed an ending cash balance of \$142,896, with debts and obligations totaling \$28,983 and contributions received of \$56,430. The resulting surplus was \$113,913. Again, this report was signed by KVP's treasurer, which indicates his knowledge of KVP's financial position. From October 17 through November 18, 1996, the date of the last deposit into KVP's bank account, KVP accepted an additional \$71,255 of contributions.

The Audit staff also noted that a total of \$6,500 of contributions were deposited after KVP had transferred \$100,000 in unneeded funds to the NRSC (10/31/96).

<sup>3</sup> The debt analysis includes receipts and disbursements reported by the Committee through March 31, 1998.

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In the Exit Conference Memorandum (Memorandum), it was recommended that KVP provide evidence demonstrating that the contributions raised in excess of its net debt were permissively received and retained and that \$100,000 was properly transferred to the NRSC. Absent such a demonstration, it was recommended that KVP seek a refund in the amount of \$100,000 from the NRSC, and pay \$104,668 to the U.S. Treasury representing contributions received in excess of its net debts.

In response to the end of fieldwork conference as well as the Memorandum, the Committee Treasurer, Kirk L. Clinkenbeard, alleged that the initial budget for KVP was estimated to be in the \$250,000 range with it being adjusted up to \$350,000 after arrival at the convention and establishing a schedule for Secretary Kemp's activities in San Diego. Furthermore, Mr. Clinkenbeard stated:

After the Convention, and as firmer estimates of costs of expenses incurred on Secretary Kemp's behalf during the convention came in, (and with a number of costs such as travel still outstanding and of an unknown amount at that point), I estimated that we would need to raise in excess of \$500,000, to cover our likely final costs.

The record should show that this committee was established for the sole purpose of helping Jack Kemp acquire the Vice Presidential nomination and was put together in a timely but flexible manner. We had to operate on guesstimates of actual expenditures, and were legally responsible for all costs actually incurred on behalf of Jack Kemp at the Convention prior to his nomination, whether or not they were authorized and budgeted in advance. At no time in 1996 did I intentionally raise any contributions for the Kemp for Vice President Committee beyond my reasonable expectations of what our budget would require. My goal in post-Convention fundraising was to ensure that the Committee did not end with a debt, in the face of uncertain and ever-increasing estimates of costs incurred. Based on our estimates of over \$500,000 in expenses, we continued to accept contributions into October. It was only towards the end of that month as all of the final bills were accounted for, that it became clear that the Committee's bills would not be as high as we had feared, thereby leaving the Committee with some excess funds already on hand.

This sworn statement was available prior to issuance of the Memorandum and so provides no new information. As noted above, KVP's representative informed the staff that no formal tracking of net debt was undertaken, the disclosure reports filed by KVP after the convention reflect surplus funds and the continued acceptance of contributions, and additional contributions were accepted even after the transfer to the NRSC. It is accepted that some uncertainty existed with respect to the amounts that would eventually be required to satisfy all KVP obligations, however, the transactions

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and cash flows described above do not reflect a careful monitoring of KVP's financial position. Regardless of the level of uncertainty that may have existed, given that the contributions transferred were received after the date of Secretary Kemp's nomination, KVP was required to refund, or to have redesignated, the additional contributions when it became apparent that they were unneeded. Only if excess campaign funds were on hand at the date of nomination could they have been transferred to the NRSC, and under no circumstances could KVP accept additional contributions after excess amounts were identified and transferred <sup>4</sup>.

A review of the most recent reports filed by KVP indicates that additional wind down costs have been incurred and paid. As a result, the amount of contributions received after no net debt existed is estimated to be equal to the transfer to NRSC.

Recommendation:

The Audit staff recommends that the Commission determine that KVP accepted contributions in excess of net primary debt amounting to \$100,000 and that KVP should request a refund from the NRSC. It is further recommended the Commission determine that KVP must either refund the last \$100,000 of contributions received, or pay \$100,000 to the U.S. Treasury.

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