



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 4, 2000

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Kirk Clinkenbeard, Treasurer  
Kemp for Vice-President  
2201 Wisconsin Avenue NW #320  
Washington, DC 20007

RE: MUR 4947

Dear Mr. Clinkenbeard:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that Kemp for Vice President ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a and 11 C.F.R. § 110.1(b)(3)(i).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

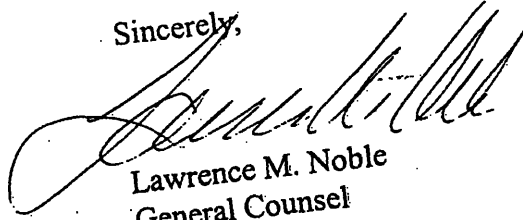
A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

21-04-405-1418

Letter to Kirk Clinkenbeard  
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Should you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Brief

21.04.405-14.00-12

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 4947  
Kemp for Vice President and )  
Kirk L. Clinkenbeard, as treasurer )

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On November 10, 1999, the Commission found reason to believe that Kemp for Vice President ("KVP") and Kirk L. Clinkenbeard, as treasurer, violated 2 U.S.C. § 441a and 11 C.F.R. § 110.1(b)(3)(i) for receiving funds in excess of net debts and then transferring those funds to the National Republican Senatorial Committee ("NRSC").

II. ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that no person may make contributions to any candidate and his or her authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Furthermore, no candidate or political committee may knowingly accept any contribution or make any expenditure in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f). The Act defines "contribution" as any 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. 2 U.S.C. § 431(8).

In the case of a contribution not designated in writing for a particular election, *with respect to any election* means the next election for that Federal office after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). In the case of a contribution designated in writing by a

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contributor for a particular election, *with respect to any election* means the election so designated. 11 C.F.R. § 110.1(b)(2)(i).

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. 11 C.F.R. § 110.1(b)(3)(i). To the extent that such contribution exceeds net debt 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 C.F.R. § 103.3(a), and if deposited, then within sixty days from the date of the treasurer's receipt, the treasurer shall refund the contribution, obtain a written redesignation or obtain a written reattribution. 11 C.F.R. § 110.1(b)(3)(i). 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 C.F.R. § 110.1(b)(5). 11 C.F.R. § 110.1(b)(3)(i).

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. 11 C.F.R. § 110.1(b)(3)(ii). 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

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committee. 11 C.F.R. § 110.1(b)(3)(ii). The amount of net debts outstanding shall be adjusted as additional funds are received and expenditures are made. 11 C.F.R. § 110.1(b)(3)(iii).

Excess campaign funds are amounts that a committee receives as contributions that are in excess of any amount needed to defray campaign expenditures. 11 C.F.R. § 113.1(e). Excess campaign funds and funds donated may be transferred without limit to any national, state or local committee of any political party. 11 C.F.R. § 113.2(c).

### **B. Factual Analysis**

The Act limits the amount that may be contributed “with respect to any election for Federal office.” 2 U.S.C. § 441a(a)(1)(A). Funds given to a candidate after an election is over cannot meet the Act’s requirements that contributions be made with respect to and for the purpose of influencing that election unless they could be used to retire outstanding debts from that election.<sup>1</sup> See 11 C.F.R. § 110.1(b)(3); *see also* Explanation and Justification for 11 C.F.R. § 110.1(b)(3), 52 Fed.Reg. 761 (January 9, 1987). An election is defined in part as a “general, special, primary, or run-off election” or a “convention or caucus of a political party which has authority to nominate a candidate.”<sup>2</sup> 2 U.S.C. § 431(1)(A) and (B).

Mr. Kemp was nominated as the Republican Party vice-presidential candidate on August 14, 1996. Therefore, this was the “primary election” for his committee. Any contributions KVP received after that date that were designated for the vice-presidential election should have been limited to KVP’s net debts outstanding.<sup>3</sup> 11 C.F.R. § 110.1(b)(3)(i).

<sup>1</sup> Absent such debts, contributions to past elections would influence future elections. Explanation and Justification for 11 C.F.R. § 110.1(b)(3), 52 Fed.Reg. 761 (January 9, 1987).

<sup>2</sup> In the Advisory Opinion context, the Commission has concluded that the “primary election for candidates for the Democratic nomination for the Office of Vice President is considered to be the National Convention since that convention had the authority to select a nominee.” Advisory Opinion 1979-43.

<sup>3</sup> The contributions at issue appear to be properly designated for the vice presidential election. The contributions were designated to the Vice Pres. Convention Expense, Kemp for Vice-President and Kemp for Vice-President Committee. According to 11 C.F.R. § 110.1(b)(4)(i), contributions shall be considered to be designated in

KVP's October 15, 1996 Quarterly Report (7/29/96-9/30/96) reflects a closing cash on hand of \$109,474 and debts and obligations owed by KVP of \$45,722. Therefore, KVP had a surplus of \$63,752 (\$109,474-\$45,722). The Pre-General Election Report (10/1/96-10/16/96) showed contributions of \$56,430 and an ending cash balance of \$142,896, with debts and obligations totaling \$28,983. The resulting surplus was \$113,913 (\$142,896-\$28,983). From October 17, 1996 through November 18, 1996, the date of the last deposit into KVP's bank account, KVP accepted an additional \$71,255 in contributions. On October 30, 1996, KVP deposited contributions totaling \$21,325. On October 31, 1996, KVP transferred \$100,000 to the NRSC and deposited an additional \$1,500 into its account. Contributions totaling \$6,500 were deposited after KVP transferred \$100,000 to the NRSC. Therefore, KVP had sufficient funds to pay all obligations by September 30, 1996, but continued to receive additional contributions in the amount of \$104,668.<sup>4</sup>

KVP did not refund or reattribute the contributions received in excess of net debts in accordance with the Commission's regulations. 11 C.F.R. § 110.1(b)(3). Rather, KVP characterized the remaining funds as excess campaign funds and transferred the funds to the NRSC. Excess campaign funds are amounts that a committee receives as contributions that are in excess of any amount needed to defray campaign expenditures and they can be transferred to another committee without limitation. 11 C.F.R. §§ 113.1(e), 113.2(c). However, the amounts that KVP transferred to the NRSC

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writing for a particular election if the contribution is made by a negotiable instrument which clearly indicates the particular election with respect to which the contribution was made. Therefore, these contributions appear to have been designated for the vice-presidential primary election.

<sup>4</sup> KVP originally told the Audit staff that the treasurer had not kept track of KVP's debt position and that no workpapers were available for review. However, at an end of fieldwork conference on April 21, 1998, counsel for the Committee stated that although workpapers were not prepared, the treasurer had kept a continuous running balance of KVP's debt position. Even if some uncertainty existed with respect to the amount of its debts and obligations, KVP was required to report an estimate of its debts and obligations. 11 C.F.R. § 104.11(b). KVP filed reports indicating it knew its debt position.

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(\$100,000) could not be transferred to the NRSC as excess campaign funds. The amounts transferred to the NRSC were composed of contributions that were accepted after the election when the Committee did not have net debts outstanding. Contributions made after the election that were designated for a particular election can only be accepted to the extent that the committee has net debts outstanding. See 11 C.F.R. § 110.1(b)(2)(i) and (ii). See also 11 C.F.R. § 110.1(b)(3)(i). Since KVP did not have net debts outstanding KVP should have refunded the contributions or sought redesignations or reattributions. 11 C.F.R. § 110.1(b)(3)(i). KVP could not transfer the funds to the NRSC. Compare 11 C.F.R. § 110.1(b)(2)(i) and (ii) with 11 C.F.R. § 113.2(c).

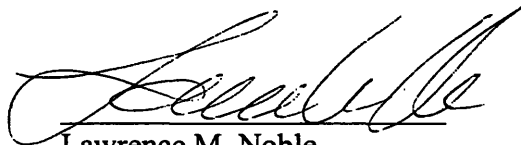
Therefore, the Office of General Counsel intends to recommend that the Commission find probable cause to believe that Kemp for Vice-President and Kirk L. Clinkenbeard, as treasurer violated 2 U.S.C. § 441a and 11 C.F.R. § 110.1(b)(3)(i).

### III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Kemp for Vice President and Kirk L. Clinkenbeard, as treasurer, violated 2 U.S.C. § 441a and 11 C.F.R. § 110.1(b)(3)(i).

Date

10/3/00



Lawrence M. Noble  
General Counsel