



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 1 8 2001

Mirage Casino Resorts, Inc.
c/o Steven S. Lucas
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
591 Redwood Highway,
No. 4000
Mill Valley, CA 94941

RE. MUR 5020

Dear Mr. Lucas:

On June 5, 2000, the Federal Election Commission notified your client, Mirage Casino Resorts, Inc., of a complaint alleging violations of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Subsequently, a copy of the complaint was forwarded to you.

Upon further review of the allegations contained in the complaint, and information supplied by you on behalf of Mirage Casino Resorts, Inc., the Commission, on October 3, 2001, found that there is reason to believe that Mirage Casino Resorts, Inc. violated 2 U S C § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C F R § 111 18(d) Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

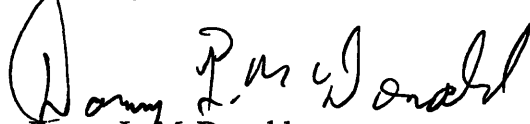
You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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 investigation to be made public.

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mirage Casino Resorts, Inc.

MUR: 5020

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Audrey Michael. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Complaint

The complaint alleges that "Mr. "Skip" Bronson and Mr. Mark Juliano improperly solicited \$17,000 in contributions from Mirage casino employees and other vendors with contracts with Mirage Casinos. Complainant avers that these Mirage executives collected these checks and forwarded them to the Gormley Committee.

B. Response and additional information

On July 6, 2000, Mirage Casino Resorts ("Mirage") submitted a response addressing the allegations outlined in the complaint. Mirage asserts that Juliano and Bronson did not "bundle" or act as a conduit for any contributions to the Gormley Committee. In addressing 15 of the 17 contributions at issue concerning Mirage, Mirage avers that the Gormley Committee received these contributions "in connection with a single fund-raising event held at a restaurant in the Bellagio (then a Mirage subsidiary) in Las Vegas. Several Mirage executives, among others, attended this fundraising event " The response further adds that the Gormley Committee paid for this event in its entirety

The response adds that “[t]he other two contributions, received from Herbert Gruder (\$1,000) and Dianne Poole (\$1,000) were not received in connection with the Las Vegas fund-raiser but were also not “bundled” by Mr. Bronson or Mr. Juliano.”

Additional publicly available information indicates the Bellagio fund-raiser was held on or about March 21, 2000 at a private room in Le Cirque, a luxury restaurant within the Bellagio Hotel. The Gormley Committee’s disclosure reports indicate that it paid the Bellagio \$1,718.51 on February 17, 2000, or roughly a month prior to the March 21, 2000 event. The Gormley Committee reported receiving two \$1,000 contributions from David Weissman, an executive of Mirage Atlantic City on March 21, 2000. In addition, the Gormley Committee reported receiving \$24,000 from 15 Nevada residents on March 21, 2000. The Gormley Committee reported thirteen of these 15 residents as Mirage employees and their spouses. However, a May 15, 2000 *New York Times* article indicates the fund-raiser may have generated as much as \$40,000 in receipts. The *New York Times* article also reports that Mirage Chairman Steve Wynn may have been involved in organizing the fund-raiser.

C. Applicable Law

Under the Act, a corporation may not make “a contribution or an expenditure in connection with any election for federal office.” 2 U.S.C. § 441b(a). An officer or director of any corporation may not consent to any such contribution. *Id.* As used in Section 441b, the term “contribution” includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with a Federal election. 2 U.S.C. § 441b(b)(2)

To effectuate this prohibition, corporations (including officers, directors or other representatives acting as agents of corporations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations. 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." *See also* 11 C.F.R. § 114.2(a)(2) (extending provisions of Part 114 of Title 11, Code of Federal Regulations, to activities of national banks in connection with Federal, state, and local elections).

Examples of facilitating the making of contributions include, but are not limited to, fundraising activities by corporations that involve:

- officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services;
- failure to reimburse a corporation within a commercially reasonable time for the use by persons, other than corporate shareholders or employees engaged in individual volunteer activity, of corporate facilities described in 11 C.F.R. § 114.9(d) (i.e., facilities such as telephones, typewriters or office furniture),
- using a corporate list of customers, clients, vendors, or others not in the restricted class to solicit contributions in connection with a fund-raiser, unless the corporation receives advance payment for the fair market value of the list,
- using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups, or

- providing catering or other food services, unless the corporation receives advance payment for the fair market value of the services. 11 C.F.R. § 114.2(f)(2)(i). Other examples of prohibited facilitation include providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee (other than the corporation's own separate segregated fund), or providing similar items which would assist in transmitting contributions, 11 C.F.R. § 114.2(f)(2)(ii), and collecting and forwarding contributions. *see. e.g.* MUR 3672.

Facilitation activities may also involve “[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.” 11 C.F.R. § 114.2(f)(2)(iv).

Exceptions to the general prohibition against corporate facilitation of contributions include the “[s]oliciting of contributions to be sent directly to candidates if the solicitation is directed to the [corporation's] restricted class. . . .” 11 C.F.R. § 114.2(f)(4)(ii). Pursuant to 11 C.F.R. § 114.1(a)(2)(i), such a restricted class includes a corporation's “stockholders and executive and administrative personnel and their families,” with whom a corporation may communicate on any subject *See also* 11 C.F.R. § 114.3

The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a contribution, provided that the charge is at least equal to the cost of such food or beverage to the

vendor, to the extent that the aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 regarding any single election.

11 C.F.R. § 100.7(b)(7).

D. Analysis

Based on a review of news items, the complaint and responses, there is reason to believe that Mirage Casino Resorts, Inc. both facilitated the making of contributions and made prohibited in-kind contributions for the Gormley Committee based on the following considerations:

- Mirage may have conferred a benefit on the Gormley Committee by using its corporate resources to collect and forward contribution checks to the Gormley Committee.
- Press Reports also suggest that more people may have attended the Bellagio fund-raiser than implied in the Mirage respondents' July 6, 2000 joint response. The number of persons in attendance is important as it may show that the Gormley Committee paid for the event at a rate lower than the normal course of business.
- The information presented, though limited, appears to indicate that the Gormley Committee obtained a corporate resource in the form of a list of vendors for purposes of the Bellagio fund-raiser without compensating Mirage.

By explaining how the Gormley Committee received contributions from Mirage employees, the collective response of the Mirage respondents raises questions about possible corporate facilitation. In its response, the Gormley Committee did not address the Bellagio fund-raiser. The response of the Mirage respondents appears to suggest that the Bellagio fund-raiser did not take place in Atlantic City, New Jersey. Instead, it seems

that the Bellagio fund-raiser took place at a Mirage owned restaurant in the Bellagio Casino Resort in Las Vegas, Nevada, thousands of miles away. In addition, according to Mirage's July 6, 2000 response, the "single fund-raising event" included several Mirage executives and other individuals. In addition, Mirage states that nine of the eleven Mirage employees listed in the complaint attended the event.

**1. Use of Corporate Resources to Collect and Forward
Contributions**

The Gormley Committee's reports raise concerns about possible corporate facilitation because they do not show any apparent travel expenses incurred by Gormley in attending the event. A May 15, 2000 New York Times article¹ makes the charge that "State Senator William L. Gormley . . . slipped away from the campaign trail . . . for an unpublicized visit to Las Vegas." Furthermore, the article reports "[t]here to greet Mr. Gormley at the Le Cirque restaurant, Steve Wynn's sumptuous new fun house, was the gambling magnate himself." The article also reports that Wynn was involved in the planning of the event, noting "Mr Wynn had gathered casino executives for a fund-raiser that collected about \$40,000 in donations for Gormley, who in recent years has championed an effort by New Jersey to spend more than \$200 million to subsidize the opening of a Wynn casino in Atlantic City." Neither the Mirage respondents nor the Gormley Committee have provided any information about whether Gormley attended

It would seem likely that Gormley would incur expenses through travel from Atlantic City to Las Vegas, Nevada. At a minimum, he would incur airline fare and transportation charges from the airport to the Bellagio Hotel

¹ *New York Times*, "Casinos put Money in Race in New Jersey" May 15, 2000

Nevertheless, the Gormley Committee's April Quarterly and June Quarterly reports show no payments or debts to airlines, no reimbursements or debt of any sort to Gormley, and no payments or debts to credit card companies. Indeed, the only reported travel disbursement of more than \$200 is a \$349 reimbursement for travel and lodging expenses to a committee staff person on April 19, 2000.

The scarcity of reimbursement information in the Gormley Committee's disclosure reports regarding travel expenses incurred due to the Bellagio fund-raiser may indicate prohibited corporate activity. The *New York Times* article may have been in error and neither Gormley nor aides may have been present at the event. However, given the number of Mirage executives contributing and the reports of Wynn's personal involvement, such an outcome would likely indicate that at a minimum Mirage executives collected and forwarded checks for the benefit of the Gormley Committee. As such, Mirage would facilitate the making of contributions for a Federal election.

See, e g., MUR 3672.

2. Mirage may have charged a Fee lower than the Fair Market Value

Given the luxury status surrounding the Le Cirque restaurant at the Bellagio, it appears possible that the cost of holding a fund-raising function at the restaurant may have exceeded the amount apparently paid by the Gormley committee, thereby potentially resulting in an in-kind contribution from Mirage to Gormley even after accounting for permissible food and beverage discounts. The Gormley Committee's Amended April Quarterly Report discloses that on February 17, 2000 it paid \$1,718.51 in event costs to

the Bellagio Press reports have touted the Bellagio, which opened in October 1998 at a cost of \$1.6 billion,² as one of the most luxurious casino resorts in the world. The May 15, 2001 New York Times article states that the fund-raiser took place at the Le Cirque restaurant in the Bellagio.

According to the Le Cirque Bellagio's website, there are a number of pricing options for private parties. First, there is a charge for the use of the private room, which varies from \$500 to \$1,000.³ Second, there is an additional charge for the food at the party, which depends on the type of meal served. If the event is a dinner party, for example, the charge is between \$80 to \$170 per person with an additional 20% service charge and 7.25% for tax.

As noted above, 11 C.F.R. § 100.7(b)(7) provides that a vendor is privileged to sell food and beverages at a discount so long as: (1) the difference between the discount price and the vendor's usual and normal charge does not exceed \$1,000 per candidate, per election, and (2) the discount price is no lower than the vendor's cost. Depending on the number of persons attending, the nature of the food and beverage provided, the time of day of the event, and the particular private room used, it appears that the difference between the discount price and the usual and normal charge would have exceeded \$1,000. If, for example, 25 persons were present and the type of meal service was dinner (costing between \$80 and \$170) at the Circo private room, which charges \$700 for the use of the

² In an October 8, 1998 *Las Vegas Sun* article, Warren Marr, gaming consultant for PriceWaterhouseCooper, declared the Bellagio the most expensive hotel ever built

³ According to the Le Cirque website (www.lecirque.com), three private rooms are available, ranging from \$500 to \$1,000. First, at a charge of \$500, the Saltimbanco room seats 25 to 50 patrons for either lunch or dinner, or it can hold 60 persons for a cocktail reception. Second, the Circo Private Room seats 25 to 30 patrons for either lunch or dinner at a charge of \$700. Alternatively, the Circo Private Room can hold 40 persons for a cocktail reception. Finally, at a charge of \$1,000, the Le Cirque room can hold 40 - 80 persons for lunch.

room, the result is a prohibited contribution irrespective of 11 C.F.R. § 100.7(b)(7), the attendance of 25 persons at the Bellagio fund-raiser is a reasonable speculation based on the *New York Times* account indicating that more contributions were generated by the fund-raiser than originally discerned by the Commission, and/or by the possible attendance of senior Gormley staff.

Section 100.7(b)(7) applies only to the sale of food and beverages. As such, the Bellagio could not offer a discount on the charge of the room. As noted in the above example, the charge for the use of the Circo private room is \$700. For purposes of this scenario, given that the room charge is not applicable to 11 C.F.R. § 100.7(b)(7), the \$700 Circo private room charge reduces the total amount that the Gormley Committee paid for the meal portion of the event to \$1,018.51; the total amount that the Gormley Committee paid for the event (\$1,718.51) less \$700. Thus, for purposes of 11 C.F.R. § 100.7(b)(7), Mirage could charge the Gormley Committee \$1,018.51 for the food and beverage portion of the event only if the difference between the discount price (\$1,018.51) and the usual and normal charge does not exceed \$1,000.

If dinner was the meal service provided, applying the lowest charge applicable would still amount to a prohibited in-kind contribution. If the meal per person charge was \$80 (out of a possible \$170), and the appropriate service charges and tax (20% and 7.25% respectively) are added, the usual and normal charge would be \$2,550. Such an amount represents a \$1,531 difference between the normal business charge for food (\$2,550) and the charge at least equal to cost (\$1,018.51). Hence, Mirage would be making a prohibited contribution of at least \$531, in violation of 2 U.S.C. § 441b(a). While it is possible that fewer people attended, which might result in no contribution, it is

also possible that more attended – or that the meal served was not the least expensive available. Either factor could substantially increase the amount of the potential corporate contribution.

3. The use of a Mirage Corporate List without Compensation

Finally, the information currently available appears to suggest that regardless of who organized the Bellagio fund-raiser, it is likely that they would have needed to utilize the corporate resources of Mirage Casino Resorts to devise a list of individuals to invite. The Gormley Committee's April Quarterly Report confirms the nine individuals mentioned in the July 6, 2000 response as Mirage executives. Of these executives, David Weissman, listed in the report as an executive of Mirage Atlantic City, appears to be the lone non-Nevada resident in attendance; Weissman made two \$1,000 contributions to the Gormley Committee.

It seems likely that the Nevada residents listed in the Gormley Committee's April Quarterly Report as having made contributions to the Gormley Committee on March 21, 2000 also attended the fund-raiser at the Mirage Bellagio. The Gormley Committee reported receiving \$24,000 from 15 Nevada residents on March 21, 2000. The Gormley Committee reported thirteen of these 15 as Mirage employees and their spouses.⁴

The two other Nevada residents that made contributions on March 21, 2000 appear to either qualify as vendors, clients, or customers with ties to Mirage Casino Resorts. While the April Quarterly Report classifies Mark Tratos as a "self-employed"

⁴ In addition to the eight Mirage employees and three spouses, this number also includes two executives from Mirage subsidiaries: William McBeath, president of Treasure Island, and Robert Sheldon, president of Golden Nugget Las Vegas.

attorney, press accounts report that Tratos has represented Mirage in a lawsuit involving a trademark dispute.⁵ Regarding the second Nevada resident, Charles Mathewson, while the Gormley April Quarterly vaguely describes his occupation as a Vice President for the employer "Public Affairs Affairs," the Commission has discovered that Mr. Mathewson is the Chairman of International Game Technology ("IGT"), a gaming manufacturer known for making spinning-reel slot machines, video gaming machines, and MegaJackpot progressive slot systems for legal gaming jurisdictions worldwide. Both individuals made two \$1,000 contributions, one for the 2000 Primary Election, and one for the 2000 General Election.

Hence, a review of the statements of the Mirage respondents, coupled with the Gormley Committee's disclosure reports, appear to suggest that: (1) there were at least 16 contributors in attendance at the March 21, 2000 Bellagio fund-raiser; (2) the event raised at least \$26,000 for the Gormley campaign; and (3) the event consisted entirely of Mirage executives, their spouses, and vendors, customers, or clients associated with the corporation.

As noted above, however, it appears that the actual number of contributions and attendees may have been higher. The Mirage respondents never stated in their response that the total number of contributions and attendees were limited to the figures alleged in the complaint. The response merely confirms that the persons noted in the complaint did in fact attend the fund-raiser. The aforementioned New York Times article, by contrast, estimates the amount of contributions received at a much higher amount, i.e. \$40,000. This could mean that more than 16 people attended the Bellagio fund-raiser. The

⁵ *Las Vegas Sun*, news column dated May 12, 2000

Gormley April Quarterly reports discloses at least 24 other individuals that made contributions on or about March 21, 2000. While none of those individuals are residents of Nevada, there are a number of employees from such business fields as construction that may have ties to Mirage regarding its future business endeavor in Atlantic City.

Given this information, it appears essential for the individual(s) responsible for organizing the event to contact business associates through the use of a Mirage corporate list of vendors, client, or customers tied to the corporation. As noted above, under 11 C.F.R. § 114.2(f)(C), using a corporate list to solicit contributions in connection with a fund-raiser is one example of corporate facilitation, unless the corporation receives advance payment for the fair market value of the list. Mirage did not address this issue in its July 6, 2000 response.

III. CONCLUSION

Accordingly, there is reason to believe that Mirage Casino Resorts, Inc. violated 2 U.S.C. § 441b(a).