

JUL 12 2000

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 99-22
AUDIT REFERRAL DATE: December 13, 1999
DATE ACTIVATED: May 17, 2000

EXPIRATION OF STATUTE OF
LIMITATIONS: December 24, 2002
STAFF MEMBER: Angela Whitehead
Quigley

SOURCE: AUDIT REFERRAL

RESPONDENTS: Eva Clayton Committee for Congress
and Patsy T. Hargrove, as treasurer
Theaoseus T. Clayton

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 438(b)

INTERNAL REPORTS Audit Documents
CHECKED: Disclosure Reports

FEDERAL AGENCIES None
CHECKED:

I. GENERATION OF MATTER

This matter was generated by an audit of Eva Clayton for Congress Committee ("the Committee") and Patsy T. Hargrove, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b). See Attachment 1. The audit covered the period between January 1, 1997 through December 31, 1998.

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II. FACTUAL AND LEGAL ANALYSIS

The Commission's audit of the Committee revealed that Eva Clayton ("the Candidate") and her spouse, Theaoseus T. Clayton, obtained a \$20,000 loan from Branch Banking & Trust Co. on December 24, 1997. Attachment 1 at 2. The Candidate's spouse was obligated for 50% of the loan. A portion of this \$20,000 was used to make a \$12,000 loan to the Committee. Because Mr. Clayton was obligated for 50% of the \$20,000 loan, he made a \$6,000 contribution to the Committee when the Candidate made the \$12,000 loan. Attachment 1. Mr. Clayton had previously made a \$1,000 contribution to the Committee. *Id.* Thus, based on the audit referral, Attachment 1, this Office recommends that the Commission find reason to believe that Theaoseus T. Clayton violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Committee and that the Committee violated 2 U.S.C. § 441a(f) by accepting the excessive contribution from Mr. Clayton.

This Office also recommends taking no further action against Mr. Clayton. Mr. Clayton was released from obligation on the \$20,000 loan on June 21, 2000.¹ Attachment 4. Further, the balance owed on the promissory note has been paid as of August 9, 1999.² In notifying Mr. Clayton of the Commission's decision to find reason to believe but take no further action, this Office will include admonishment language regarding the limits under the law.

¹ Conducting additional investigation in this case could reveal more insight into the bank's decision making process when it granted the Claytons the \$20,000 loan. The bank apparently had a tradition of having both spouses sign for an unsecured note. Attachment 2. Although Mrs. Clayton could have obtained the loan on her own, the bank documents provided by the Committee suggest that the bank did not consider solely Mrs. Clayton's assets when making the loan. Attachment 3. Thus, given the breadth of resources needed to further investigate the bank's motives, this Office does not believe that further investigation is warranted.

² The Reports Analysis Division ("RAD") has noted that the Committee reported in its 2000 April Quarterly and 12 Day Primary Reports a \$12,000 outstanding loan from Branch Banking & Trust Co. This loan is the same loan that is at issue in the instant audit referral. Although the Committee has reported the loan as still in repayment to the bank, a letter from the bank indicates that Mrs. Clayton has repaid the loan. See Attachment 5. RAD has issued a Request for Additional Information to the Committee concerning this loan.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office recommends that the Commission enter into conciliation with Eva Clayton Committee for Congress and Patsy T. Hargrove, as treasurer, prior to a finding of probable cause to believe.³ See Attachment 6. This Office also recommends that the Commission approve the proposed conciliation agreement

IV. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Eva Clayton for Committee for Congress and Patsy T. Hargrove, as treasurer, violated 2 U.S.C. § 441a(f), and enter into conciliation prior to a finding of probable cause to believe;
3. Find reason to believe that Mr. Theaoseus T. Clayton violated 2 U.S.C. § 441a(a)(1)(A), but take no further action, send an admonishment letter and close the file with respect to this respondent;
4. Approve the attached Factual and Legal Analysis;
5. Approve the attached proposed Conciliation Agreement; and

³ In MUR 4327, the Commission found reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 441a(f) by accepting a \$15,000 loan from the candidate which was obtained via a joint loan with his wife. In that case, the Commission took no further action against the committee and the candidate's spouse. Mr. Vargas had lost the primary and had a significant amount of debt with little cash on hand. In this case, Eva Clayton won the 1998 primary and general elections to become the representative for the First District of North Carolina. Currently, Eva Clayton is seeking re-election. The Committee's Pre-primary Report, filed on April 21, 2000, indicated a cash on hand amount of \$35,062.32 and an outstanding debt owed of \$6,388.13.

6. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

7/12/00
Date

BY: Kim Leslie Bright
Associate General Counsel

Attachments

1. Audit Referral Materials
2. May 25, 1999 letter from bank to Mrs. Clayton regarding co-signer tradition
3. June 9, 1999 letter from bank to Mrs. Clayton acknowledging Mr. Clayton as co-signer and explaining co-signer tradition
4. June 21, 1999 bank release of Mr. Clayton as co-maker of loan
5. October 28, 1999 letter from bank to Mrs. Clayton acknowledging repayment of \$20,000 loan
6. Proposed Conciliation Agreement for Eva Clayton Committee for Congress and Patsy T. Hargrove, as treasurer
7. Factual and Legal Analysis for Eva Clayton Committee for Congress and Patsy T. Hargrove, as treasurer



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *SG*

DATE: July 12, 2000

SUBJECT: Audit Referral 99-22-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

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Open/Closed Letters

☐

MUR

☐

DSP

☐

STATUS SHEETS

☐

Enforcement

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Litigation

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PFESP

☐

RATING SHEETS

☐

AUDIT MATTERS

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LITIGATION

☐

ADVISORY OPINIONS

☐

REGULATIONS

☐

OTHER

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: July 17, 2000

SUBJECT: Audit Referral #99-22 - First General Counsel's Report
dated July 12, 2000.

The above-captioned document was circulated to the Commission
on Thursday, July 13, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for
Tuesday, July 18, 2000.

Please notify us who will represent your Division before the Commission on this
matter.