

Don Benton
PO Box 5076
Vancouver, WA 98686

MUR 5066

September 10, 2000

Darryl R. Wold
Chairman, Federal Election Commission
999 E Street NW
Washington, DC 20463

SEP 15 3 15 PM '00

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. Wold,

I must say I was shocked to receive your letter of August 23, 2000. As I stated in my final correspondence of September 30, 1999, there were NO excessive contributions to the Benton for Congress campaign. I have signed affidavits confirming such which have been submitted to your office.

While there may have been some minor technical violations there certainly was nothing of the magnitude to warrant the kind of fine your letter suggests. The committee has not received excessive contributions and therefore cannot refund them as you suggest.

I plead with you to please read my letter of September 30, 1999 (copy enclosed). It has been nearly a year since I wrote it and it is obvious that the commission did not read it prior to your recent correspondence. I was under the impression that the matter was closed since it has been nearly a year since your last correspondence.

I want the matter closed and am willing to work with the Commission in order to achieve this.

I hope we can settle this matter in a reasonable manner.

Sincerely,

Don Benton

CC: Albert Veldhuyzen

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Don Benton
P.O. Box 5076
Vancouver, WA 98686

Copy

September 30, 1999

Robert J. Costa
Assistant Staff Director, Audit Division
Federal Election Commission
999 E Street NW
Washington, DC 20463

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. Costa,

This letter is in response to the recommendations and audit findings outlined in your letter of August 31, 1999.

With respect to recommendation #1 there were no excessive contributions to Benton for Congress. There are two separate issues in question here.

First the issue of excessive individual contributions totaling \$13,488. As I stated during the audit, I personally discussed with each and every one of these larger contributors the legal limit of their contribution and exactly how it was to be allocated and attributed. Every contribution was subsequently reported to the FEC exactly as discussed with the donor. My staff was carefully instructed by me to obtain written redesignation and reallocation letters, and to my knowledge they were successful in every case. It was only during the preparation for the audit when it was discovered that approximately 19 of these redesignation and reallocation letters had been lost or misplaced. I contacted each and every donor to again confirm the original intent of their contribution. I had each donor sign an affidavit confirming the contribution was allocated and designated the way they had originally instructed. These signed affidavits were presented to the audit staff in my original response. So I must ask, If contributions are reported properly, the report reveals no excessive contribution, and the contributor confirms that the allocation and designation as reported indeed reflect the original intent and understanding of the contributor, how can they be considered excessive? While I agree that the records were not technically perfect, the intent and spirit of the law was followed.

Now the second issue of excessive contributions from political committees totaling \$9,900. This \$9,900 represents two separate checks (2) from two (2) different contributors that were designated and reported to pay off primary election debt. In both cases each individual check and check stub clearly indicated that the check was for the purpose of paying primary debt. Therefore, these two contributions clearly meet the requirement in subsection(b) of 11 CFR \$110.0 which states only "*if the contribution is not designated in writing by the contributor for a particular election then the*

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contribution applies to the next election..." Both contributions were clearly designated in writing (on the check). Copies of these check stubs were provided in my initial response to the audit. Therefore these two contributions did not relate to the general election as indicated by the audit staff. Furthermore the audit staff's analysis that Benton for Congress had more cash on hand (\$26,823) than its primary debt (\$14,104) as of the date of the primary is incorrect. \$25,480 of the cash on hand had been specifically designated by contributors (list attached) to the general election and therefore could not technically be used to pay primary debt. The \$ 9,900 in question was not excessive general election contributions, they were primary contributions and there was sufficient primary debt to justify them.

With respect to recommendation #3. Section 104.5(f) of title 2 of the United States Code clearly states "that if any contribution of \$1,000 or more is *received* by any...." It does not say "deposited by...." Since the audit staff report uses the deposit date of the contribution upon which to base their findings, the recommendation is based purely upon speculation not fact. While I agree that some errors may have been made it is clear from the facts that the intent of the law was followed.

First, even though I instructed my staff to keep all envelopes in which contributions were made, it is obvious to me that they did not. I was however able to locate one letter and envelope from the group of 33 in question (copy enclosed). The postmark of October 9, 1999 and letter date of October 8 would indicate, even with terrible mail service, that these contributions were not received by the campaign within the 48 hour reporting period.

In addition, I have discovered one of the 33 was in fact reported. The \$1000 contribution from Brownbuilders PAC received on October 17, 1998 was reported on page 2 of the 10/19/98 48 hour report.

During the campaign, contributions were received at three different locations. Several were sent to my home address which the NRCC published early in the campaign as the campaign address. Contributions sent here were received by me but often not deposited until several days later as I was not regularly visiting the campaign office. Several were sent to P O Box 5076 and many were delivered directly to the campaign office at 2700 Andresen Rd. It is my firm belief that the two primary contributions deposited on 8/28/99 and the 20 contributions totaling \$38,000 deposited on October 19, 20 or 23rd were received by me prior to the commencement of the reporting period. This would leave only those deposited on October 26 or 30th.

During the last 30 days of the campaign contributions were coming to all three locations in very large quantities and in all sizes from \$2 to \$5,000. Thousand dollar contributions were not the only ones arriving during the reporting period and all contributions had to be processed and deposited. It is also the time when every other aspect of the campaign is at its height. It would be an understatement to say that the staff was completely swamped, overworked and exhausted. Because of this I know there were mistakes made, no doubt.

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The audit staff points out there were 121 contributions totaling more than \$212,000 received during the reporting period that required 48 hour reporting. Only 10 were apparently missed by the staff. We did not ignore this requirement, we did our best to comply with it. I believe that the staff made a good faith effort to report every \$1000 contribution received during the reporting period but likely did not deposit every contribution received in the order it was received. To claim that because the contribution was deposited during the reporting period it is a violation is simply not an accurate assumption. It appears that the overwhelming majority of the 33 contributions in question were received by the campaign outside the twenty day, 48 hour reporting period.

In closing let me say that this whole process has been a real education for a first time congressional candidate like myself. FEC laws are cumbersome, complex and difficult, and while some mistakes were made, I believe the campaign substantively complied with all FEC laws and regulations. Our records, while not in perfect order, were in good condition as the audit staff has stated. My treasurer and I have cooperated fully with the audit team and certainly have learned a lot. It has been a grueling process that has taken up my entire summer. The committee has no cash on hand, can no longer raise money and is closed down.. Rest assured the process of this audit has proved to be significant punishment in and of itself. At times it has been more than I can bear. While I certainly remain cooperative with the Commission, I respectfully request that this matter be closed.

Sincerely,

Donald M. Benton

Enclosures