



National Republican Congressional Committee

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FEC MAIL ROOM

2000 SEP 26 P 3:37

Donald F. McGahn II
General Counsel

MUR 5100

September 26, 2000

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 26 4 09 PM '00

Re: Request for Press Office Corrective Action and Supplemental
Complaint Against McCallion for Congress Committee, Darrel L.
Paster, Esq. as Treasurer

Dear Mr. Noble:

This letter supplements our prior complaint against McCallion for Congress, filed September 21, 2000.

I was troubled to read headlines in yesterday's *Daily Freeman* (copy attached), and stories in other papers today (also attached) that the respondent in this matter has already been "vindicated," that the "candidate did not err in disclosures," and that the "congressional hopeful did not break the law, official says." The story states that "according to **Federal Election Commission officials** – who had notified him initially that he was not in compliance with requirements – Democratic Congressional hopeful Kenneth McCallion is right" (emphasis added). The "official" identified is Federal Election Commission spokesman Ian Stirton, and the article claims he made such statements this past Friday.

Both yesterday and today I have spoken to Mr. Stirton regarding the matter, and he does not recall ever saying anything of the sort. He conveyed to me that he did not in any way comment on my prior complaint, and certainly did not "vindicate" McCallion. I find this to be very credible. We all know that the FEC press office does not have the authority to *sua sponte* opine on the merits of a pending complaint. It would be unprecedented for the press office to comment on the merits of the matter. Most troubling, though, is that local news reports have characterized this as tantamount to a dismissal of the matter.

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The complaint raised two issues, both of which are meritorious: (1) McCallion's failure to file a pre-primary report; and (2) the possible use of prohibited funds in his campaign.

With respect to the first point, the Commission has long held that a pre-primary report is mandatory even when a candidate is unopposed. 11 C.F.R. § 104.5(a)(1)(i). Moreover, in at least one instance, the Commission has opined that a report is due even if the candidate does not actually appear on the ballot. This is the position that the Commission has taken with respect to New York. To the best of our knowledge and belief, the Commission sent to all New York candidates a notice informing them of the required filing (attached hereto). And obviously, everyone else¹ (except for Mr. McCallion) thinks that they need to file a pre-primary report, even when they are unopposed, and even if they do not appear on the ballot.²

And McCallion's self-proclaimed vindication ignored the second issue raised in the complaint, regarding the source of his funding. In fact, his boasts of vindication only strengthen our prior complaint. The failure to file the pre-primary report goes to the larger issue that McCallion is refusing to disclose to the public the source of his funding. Given the questions raised in the original complaint (the \$15,000 loans, his lack of personal finances on his PFD, etc.) there are serious questions here.

McCallion would have us believe that he somehow figured out the magic loophole to avoid filing a pre-primary report, a loophole that has alluded the entire New York delegation. Further, the FEC itself apparently was unaware of this loophole as well, in light of its primary election report notice, sent to all New York Congressional Committees. And his loophole does not explain his failure to file any 48 hour notices – these of course cover all contributions to the general election made with the 20 day to 48 hour window before the primary.

McCallion's self-proclaimed vindication is all a ruse – McCallion doesn't want the public to know the true status of his finances. To say that he really isn't a candidate in the primary election is an excuse much too convenient, cobbled together after the fact. On his July quarterly report, he checked the box for "primary." Only recently has he

¹ We have confirmed by reference to your website that every single Member of the New York delegation, on both sides of the aisle (with one exception), unopposed or not, on the ballot or not, has filed a pre-primary report. And McCallion's opponent, Congressman John Sweeney, filed a pre-primary report.

² Several of these reports are quite voluminous, and one would think if they did not have to file such a report they would not do so. For example, Mr. Lazio's report was 1506 pages; Mr. Owens' was 65; Mr. Rangel's was 56; and Mr. Forbes was 46. In the handful of instances where a New Yorker did not file, they were sent the identical notice that was sent to McCallion. All but one have filed a pre-primary report (Mr. Meeks of the sixth district being the only hold-out).

changed his mind about this. Moreover, a review of the public record *via* the Commission's website reveals no further correspondence from the Commission on the point, only McCallion's self-serving letter.

In reality, the only candidate who would forgo the ability to raise an additional \$1,000 for a primary would be a self-financed candidate. McCallion obviously plans on doing that, and the public has a right to know the true source of his funding. He is knowingly and willfully denying the public its right to know.

Ultimately, the complaint is meritorious, and Commission review is certainly warranted. The fact remains that the public is still unaware of McCallion's funding, even more so now that they have been misinformed regarding McCallion's so-called "vindication." We respectfully request that the public record be corrected on this matter.

Thank you for your attention to this matter. The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,

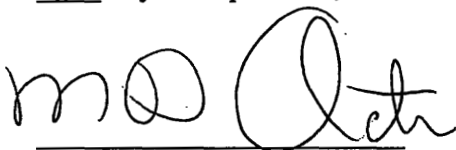


Donald F. McGahn II

District of Columbia

Signed and sworn to before me this

26 day of September, 2000.



Notary Public

My Commission expires

M.D. ACTON
Notary Public, District of Columbia
My Commission Expires July 14, 2004



21.04.403.4718

in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

[45 FR 15108, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 50 FR 50778, Dec. 12, 1985; 55 FR 26386, June 27, 1990; 56 FR 67124, Dec. 27, 1991; 60 FR 7874, Feb. 9, 1995; 61 FR 3549, Feb. 1, 1996]

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

(a) Every political committee which makes independent expenditures shall report all such expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person (other than a political committee) shall report independent expenditures in accordance with 11 CFR part 109.

(b) *24 Hour reports.* Any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, shall be reported within 24 hours after such independent expenditure is made. Such report shall be filed with the appropriate officers listed in 11 CFR 104.4(c) and shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(c) *Where to file.* Reports of independent expenditures under 11 CFR 104.4 and part 109 shall be filed as set forth at 11 CFR 104.4(c)(1) through (3).

(1) For independent expenditures in support of or in opposition to, a candidate for President or Vice-President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate: with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Federal Election Commission and the Secretary of State for the State in which the candidate is seeking election.

[45 FR 15108, Mar. 7, 1980, as amended at 61 FR 3549, Feb. 1, 1996]

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) *Principal Campaign Committee of House or Senate Candidate.* Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives or to the Senate shall file reports on the dates specified at 11 CFR 104.5(a) (1) and (2).

(1) *Election year reports.* (i) *Pre-election reports.* (A) Pre-election reports for the primary and general election shall be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report shall be mailed no later than the 15th day before any election.

(B) The report shall disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.* (A) The post-general election report shall be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The report shall be complete as of the 20th day after the general election.

(iii) *Quarterly reports.* (A) Quarterly reports shall be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year.

(B) The report shall be complete as of the last day of each calendar quarter.

(C) The requirement for a quarterly report shall be waived if, under 11 CFR 104.5(a)(1)(i), a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(2) *Non-election year reports.* (i) *Semi-annual reports.* (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(b) *Principal campaign committee of Presidential candidate.* Each treasurer of a principal campaign committee of a

House hopeful vindicated

Candidate did not err in disclosures

■ Contrary to previous allegations, Kenneth McCallion, a Democrat running for Congress, has complied with election laws about his campaign's finances.

By MICHAEL McCAGG
Freeman staff

The Democratic candidate in the 22nd Congressional District is rebuffing claims that he failed to properly file financial disclosures for his campaign.

And, according to Federal Election Commission officials — who had notified him initially that he was not in compliance with requirements — Democratic Congressional hopeful Kenneth McCallion is right.

Federal Election Commission spokesman Ian Stirton said on Friday that McCallion, an Ancram resident, was not required to file a financial report for the period ending Aug. 30, as his opponent, Republican incumbent John Sweeney, had alleged during an interview last week.

In that interview, Sweeney spokeswoman Carey Dearnley — who was being interviewed after Sweeney declined to be interviewed — charged that

Daily Freeman 9.25.00

Congressional hopeful did not break the law, official says

Continued from A1
McCallion "had not filed by the most recent deadline" to do so.

Under Election Commission requirements, McCallion — who last filed a report for the period closing at the end of June that showed he had collected only \$27,804 — does not have to file another report until Oct. 15. That report is

supposed to detail all donations he has accepted through Sept. 30.

The Democrat was notified in error by Federal Election Commission Assistant Staff Director John Gibson on Sept. 1 that he violated federal requirements by not filing a report in August, Stirton said.

A report was only due then if McCallion was in a primary

race for the Democratic endorsement to challenge Sweeney — which he was not.

That error occurred because McCallion made a mistake in filing paperwork with the election commission.

A volunteer for McCallion's campaign said on Friday that the New York City attorney would have a financial report filed by the Oct. 15 deadline.

21.04.403.4720

Record B1 9/26

Democratic candidate didn't need to file financial report as Sweeney alleged

Special to The Record

The Democratic candidate in the 22nd Congressional District is rebutting claims that he failed to properly file financial disclosures for his campaign.

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PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

NEW YORK
Congressional Committees

August 7, 2000

FOR COMMITTEES INVOLVED IN THE PRIMARY (09/12/00)

REPORT	REPORTING PERIOD ¹	REG./CERT. MAILING DATE ²	FILING DATE
Pre-Primary	07/01/00 - 08/23/00 —48 Hour Notices—	08/28/00	08/31/00
October Quarterly	08/24/00 - 09/30/00	10/15/00	10/15/00 ³

WHO MUST FILE

Principal campaign committees of congressional candidates⁴ (including unopposed candidates) who seek nomination in the primary must file the above reports and notices. If the campaign has more than one authorized committee(s), in addition to the principal campaign committee, the principal campaign committee must also file a consolidated report on Form 32.

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more, during the period of August 24 through September 9, 2000.

The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s). U.S. House candidates faxing 48-hour notices should transmit them to the FEC at 202/219-0174. Senate candidates should transmit them to the Secretary of the Senate at 202/224-1851. Note that 48-hour notices are the only FEC documents that may be faxed.

Reports must include the beginning and the end of the reporting period. A reporting period always begins with the first day of the month in which the report is filed. If the committee is new and has not yet begun its activities, the reporting period will be the first day that occurred before the committee was organized.

Reports must be received in the filing office postmarked by the mailing date; otherwise, they must be received by the filing office by the filing date.

Filing offices are not extended when they fall on nonworking days; however, the FEC and Secretary of the Senate will be open to receive reports on October 15.

⁴An individual becomes a candidate for Federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions or expenditures. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports.

(over)