FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 724

Date Filmed 5/9/79 Camera No. --- 2

Cameraman GPC

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MG 721

PS Form 3811 Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered .... ¢
- ☑ Show to whom, date, and address of delivery .... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered .... ¢
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  Show to whom, date, and address of delivery . $____
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2. ARTICLE ADDRESSED TO:
J. Russell Kirby
Kirby for Congress Committee

3. ARTICLE DESCRIPTION:

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	941328	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Sharon Bryant

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US POSTMASTER WILSON, NC
APR 18 1978

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Wilson MAIN office

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☆GPO 1977-0-249-595

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

April 16, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J. Russell Kirby
Kirby for Congress Committee
206 N. Tarboro Street
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724

Dear Mr. Kirby:

After receiving your most recent submissions of March 16, 1979, in connection with MUR 724, the Commission has determined to take no further action against the Kirby for Congress Committee in this matter. Accordingly, the Commission has closed its file in this matter.

If you have any further questions, please contact Marsha Gentner, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

William C. Oldaker
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 724
Kirby for Congress Committee	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on April 11, 1979, the Commission determined by a vote of 6-0 to adopt the following recommendations, as set forth in the General Counsel's Report dated April 6, 1979, regarding the above-captioned matter:

1. Accept the statement submitted by the Kirby for Congress Committee concerning the elimination of its disputed debt owed to Cook, Ruef, Spann and Company.

2. Find that the conditions set forth by the Commission on November 20, 1978, for no further action in this matter have been met by the Committee

3. Take no further action against the Kirby for Congress Committee and close the file.

4. Send the letter attached to the above-named report.

Attest:

4/12/79 — Marjorie W. Emmons

Date

Marjorie W. Emmons
Secretary to the Commission

Received in Office of Commission Secretary: 4-9-79, 10:44
Circulated on 48 hour vote basis: 4-9-79, 4:30

7 9 0 4 0 1 0 3 5 3 8 3

April 9, 1979

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the attached General Counsel's Report on MUR 724 distributed to the Commission on a 48 hour tally basis.

Thank you.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

79 APR 9 A10: 44

In the Matter of	)	
	)	MUR 724
Kirby for Congress Committee	)	

GENERAL COUNSEL'S REPORT

On November 20, 1978, the Commission determined that no further action should be taken against the Kirby for Congress Committee ("the Committee") on the condition that the Committee refund a total of $252 in excess contributions from three individuals, and submit a satisfactory debt settlement statement concerning an outstanding debt to Cook, Ruef, Spann and Company. Mr. Kirby, an attorney, notified this Office that he would handle this matter for the Committee.

Mr. Kirby has sent the refund checks requested in this matter. Copies of these checks are attached to this Report.

Mr. Kirby has also sent a statement concerning the debt of $1,999.02 owed to Cook, Ruef, Spann and Company. The information submitted by Mr. Kirby reveals that the debt in question is disputed. Mr. Kirby asserts that Cook, Ruef, Spann and Company have been paid in full for all services performed and materials delivered to the Committee as per their agreement. The Committee contends that any such claim by Cook, Ruef, Spann and Company is contested. Cook, Ruef, Spann and Company apparently either agreed with the Committee's contention or determined that further efforts to collect would not be fruitful, as the corporation has not further pursued any claim against the Committee. The Office of General

Counsel recommends that the Commission accept the attached statement submitted by Mr. Kirby on behalf of the Committee concerning the elimination of its disputed debt to Cook, Ruef, Spann and Company.

As the Committee has submitted the above statement concerning the elimination of the Committee debt to Cook, Ruef, Spann and Company, and has refunded the $252 in excess contributions as requested by the Commission, the General Counsel's Office recommends that the Commission find that the conditions it set forth for no further action in this matter have been met by the Committee, and that the file should be closed.

RECOMMENDATIONS

1. Accept the statement submitted by the Kirby for Congress Committee concerning the elimination of its disputed debt owed to Cook, Ruef, Spann and Company.

2. Find that the conditions set forth by the Commission on November 20, 1978, for no further action in this matter have been met by the Committee.

3. Take no further action against the Kirby for Congress Committee and close the file.

4. Send the attached letter.

4/6/79

DATE

William C. Oldaker
General Counsel

Attachments:
Copies of Refund Checks
Copy of Disputed Debt Statement

P. O. BOX 249
WILSON, NC 27893

March 16 1979 — 66-593/531 — Check No 216

PAY TO THE ORDER OF Hubert Scott $ 50 00/xx

Fifty + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr. — J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 7111379⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

215

March 16 1979 — 66-593/531

PAY TO THE ORDER OF Exum Scott $ 100 00/xx

One Hundred + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr. — J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 7111379⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

214

March 16 1979 — 66-593/531

PAY TO THE ORDER OF Corson Barnes $ 52 00/xx

Fifty-two + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr. — J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 7111379⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

213

March 16 1979 — 66-593/531

PAY TO THE ORDER OF Dr. James E. Etheridge $ 50 00/xx

Fifty + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund on Pol. Contr. — J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 7111379⑈

Gentner 6007 97C4

RECEIVED
FEDERAL ELECTION
COMMISSION

'79 MAR 26 AM 10:31

901716

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

March 16, 1979

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

Re: MUR 724 (78)

Dear Mr. Oldaker:

I have agreed to refund contributions your office considers to be excessive. Copies of the checks are attached. Delivery should take place this weekend and the cancelled checks will be available after going through the bank. When paid by the bank I will be glad to forward that proof.

Pursuant to paragraphs a, b, c and d of the next to the last paragraph on the attached Debt Settlement instructions, I submit the following on the Cook, Ruef, Spann & Company disputed account:

a) I am unaware of any terms of credit. The campaign committee was billed periodically for services and materials furnished. Payment followed in due course except in case of error or violation of terms of any agreement on specific items.

b) The creditor originally contended a much larger amount was due to it. Through checking and negotiation the figure was voluntarily lowered to the present amount. This was done by others than myself.

c) The creditor has pursued no remedies and I don't anticipate any will be pursued.

d) There has been no settlement in the legal sense because the debt is vigorously disputed.

The basis for dispute is that I contend Cook, Ruef and Spann have been paid in full for all services and materials delivered or performed as agreed. If items were delivered too late for effective use or services not performed, then I don't feel any obligation to make payment.

This matter has not been settled legally, but I have not heard from any representative for them in many months and I don't anticipate hearing from them further. If so, the claim will be contested and under our law this claim is uncollectible. I refer you to previous letters and enclosures in this regard.

Trusting that this matter is concluded, I am

Sincerely yours,

J. Russell Kirby

J. Russell Kirby

Enclosures

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J. Russell Kirby
Kirby for Congress Committee
206 N. Tarboro Street
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724

Dear Mr. Kirby:

After receiving your most recent submissions of March 16, 1979, in connection with MUR 724, the Commission has determined to take no further action against the Kirby for Congress Committee in this matter. Accordingly, the Commission has closed its file in this matter.

If you have any further questions, please contact Marsha Gentner, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

William C. Oldaker
General Counsel

BCC+ 9704

RECEIVED
FEDERAL ELECTION
COMMISSION

'79 MAR 26 AM 10:31

901716

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

March 16, 1979

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

Re: MUR 724 (78)

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b) The creditor originally contended a much larger amount was due to it. Through checking and negotiation the figure was voluntarily lowered to the present amount. This was done by others than myself.

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Trusting that this matter is concluded, I am

Sincerely yours,

J. Russell Kirby

J. Russell Kirby

Enclosures

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

216

March 16 1979

66-593/531

PAY TO THE ORDER OF Hubert Scott $ 50 00/xx

Fifty + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr.

J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 711137⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

215

March 16 1979

66-593/531

PAY TO THE ORDER OF Exum Scott $ 100 00/xx

One Hundred + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr.

J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 711137⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

214

March 16 1979

66-593/531

PAY TO THE ORDER OF Corson Barnes $ 52 00/xx

Fifty-two + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund Pol. Contr.

J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 711137⑈

MR. J. RUSSELL KIRBY
P. O. BOX 249
WILSON, NC 27893

213

March 16 1979

66-593/531

PAY TO THE ORDER OF Dr. James E. Etheridge $ 50 00/xx

Fifty + no/100 DOLLARS

The Heritage Bank
LUCAMA, N. C. 27851

FOR Refund on Pol. Contr.

J. Russell Kirby

⑆0531⑈0593⑆ ⑈205 711137⑈

DEBT SETTLEMENT

2 U.S.C. § 434(b) (12) and 11 CFR 104.8(a) require the continuous reporting of debts and obligations and call for a statement by the candidate/committee as to the circumstances and conditions under which a debt is extinguished. Section 100.4 (a) (6) of the regulations provides that "the extension of credit for a length of time beyond normal business or trade practice" is a contribution unless the creditor has made "a commercially reasonable attempt to collect the debt".

The Commission's regulations, part 114.10, provide that a corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the extension of credit is in the ordinary course of the corporation's business and that the terms of credit are substantially similar to extensions to nonpolitical debtors.

If a corporate debt is settled in a commercially reasonable manner, the settlement will not be considered a prohibited corporate contribution under 2 U.S.C. § 441b(a). However, the debtor must file a statement of settlement with the Commission prior to the termination of reporting status, and the settlement is subject to Commission review. If a corporate creditor's debt settlement is not approved by the Commission, the amount of the debt forgiven is a contribution-in-kind under the Act, thereby giving rise to a 2 U.S.C. § 441b (a) violation.

Information to be submitted by debtor and/or creditor:

-whether credit was extended in the ordinary course of the creditor's business;
-whether credit was extended on terms substantially similar to extensions to non-political debtors;
-whether the debtor has undertaken all commercially reasonable efforts to satisfy the outstanding debt;
-whether the creditor has pursued its customary remedies in order to collect on the debts;
-whether the creditor is in agreement with the terms of settlement.

Submission of the following information may be accepted as an adequate debt settlement statement:

a) Initial terms of credit with the corporate creditor
b) Steps taken by the debtor to extinguish the debt
c) Remedies pursued by the creditor
d) Terms/circumstances of the settlement of the debt

If the debt is a disputed one, include the basis of the dispute and how the matter was settled.

KIRBY & CLARK
ATTORNEYS AT LAW
GOLD PROFESSIONAL BUILDING
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

FEDERAL ELECTION
COMMISSION

10:31

Attention:
Ms. Marsha Gentner, Attorney

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO CHARLES STEELE

FROM: MARJORIE W. EMMONS mWE

DATE: MARCH 27, 1979

SUBJECT: MUR 724 - Interim Investigative Report dated 3-21-79; Received in OCS 3-26-79, 7:50

The above-named document was circulated on a 24 hour no-objection basis at 12:00, March 26, 1979.

The Commission Secretary's Office has received no objections to the Interim Investigative Report as of 12:00 this date.

March 23, 19 9

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 728

Please have the attached Interim Invest Report on MUR 724 distributed to the Commission.

Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of)
Kirby for Congress Committee)

79 MAR 26 A 7: 59

INTERIM INVESTIGATIVE REPORT

On November 20, 1978, the Commission voted to take no further action against the Kirby for Congress Committee ("the Committee") on the condition that the Committee refund $252 in excess contributions and submit a satisfactory debt settlement statement for an outstanding Committee debt. Mr. Kirby is now handling this matter on behalf of the Committee.

Mr. Kirby and the General Counsel staff have had several conversations in order to inform Mr. Kirby of the steps involved in compiling a debt settlement statement and in complying with the conditions set forth by the Commission, and to discuss Mr. Kirby's reluctance to comply with the conditions required for no further action in this matter. However, upon return from a lengthy business trip, Mr. Kirby informed this Office he intended to comply with the Commission's requests. He has prepared and sent a debt settlement statement, along with copies of the refund checks, and the General Counsel's Office should receive these materials in a few days.

3/21/79
Date

William C. Oldaker
General Counsel

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO CHARLES STEELE

FROM: MARJORIE W. EMMONS MWE

DATE: MARCH 6, 1979

SUBJECT: MUR 724 - Interim Investigative Report dated 3-2-79; Received in OCS Friday, 3-2-79, 4:57

The above-named document was circulated on a 24 hour no-objection basis at 1:00, Monday, March 5, 1979.

The Commission Secretary's Office has received no objections to the Interim investigative Report as of 1:30 this date.

March 2, 1979

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the attached Interim Invest Report on MUR 724 distributed to the Commission.

Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

In the Matter of)
)
Kirby for Congress Committee)

MUR 924

79 MAR 2 P4: 57

INTERIM INVESTIGATIVE REPORT

On November 20, 1978, the Commission voted to take no further action against the Kirby for Congress Committee ("the Committee") on the condition that the Committee refund $252 in excess contributions and submit a satisfactory debt settlement for an outstanding Committee debt. Mr. Kirby is now handling this matter on behalf of the Committee.

Mr. Kirby and the General Counsel staff have had several conversations in order to inform Mr. Kirby of the steps involved in compiling a debt settlement statement and in complying with the conditions set forth by the Commission to close this matter. Although Mr. Kirby has been out of town for the past several weeks on business, he informed the staff upon his return that he intends to comply with the Commission's requests and will be sending the debt settlement statement and proof of the refund of the contributions very shortly.

3/2/79
Date

William C. Oldaker
William C. Oldaker
General Counsel
by Gary L. Johansen

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO CHARLES STEELE

FROM: MARJORIE W. EMMONS MWE

DATE: FEBRUARY 13, 1979

SUBJECT: MUR 724 - Interim Investigation Report dated 2-9-79; Received in OCS 2-9-79, 12:32

The above-named document was circulated on a 24 hour no-objection basis at 10:30, Monday, February 12, 1979.

The Commission Secretary's Office has received no objections to the Interim Investigation Report as of 12:00 this date,

79040123600

February 9, 1979

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. GArr

SUBJECT: MUR 724

Please have the attached Interim Invest Report on MUR 724 distributed to the Commission.

Thank you.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

79 FEB 9 P12: 32

In the Matter of)
) MUR 724
Kirby for Congress Committee)

INTERIM INVESTIGATION REPORT

On November 20, 1978, the Commission voted to take no further action against the Kirby for Congress Committee ("the Committee") on the condition that the Committee refund $252 in excess contributions and submit a satisfactory debt settlement statement for an outstanding Committee debt.

The Committee no longer exists. Mr. Kirby contacted this Office in order to handle this matter for the Committee. Because he did not understand what was involved in compiling a debt settlement statement, an informational sheet plus instructions, were sent to him along with a list of those to whom the excess contribution funds should be returned. The letter also informed Mr. Kirby that if the required steps were not taken by him/the Committee within 10 days, the Commission might take further action in this matter.

Mr. Kirby received the letter from this Office on January 29,1979. This Office is prepared to make a further recommendation in this matter if no response is received by February 8, 1979.

2/9/78

Date

William C. Oldaker
General Counsel

790401 3 3 6 0 2

GCC# 9275

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

TELEPHONE
919/243-6141

February 5, 1979

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N. W.
Washington, D. C. 20463

Re: MUR 724 (78)

Dear Mr. Oldaker:

In your letter of January 19, 1979, you raise questions about:

1. An indebtedness reported to be owed to Cook, Ruef and Spann.
2. Excess contributions from listed persons.

My contention on the Cook, Ruef and Spann matter is covered in my letter to you of October 30, 1978, a copy being attached.

My contention as to excessive contributions is set out in my letter to you dated December 14, 1978, a copy being attached.

I would appreciate your letting me know why these explanations are not satisfactory.

Thanking you in advance for your attention to this matter, I am

Sincerely yours,

J. Russell Kirby

J. Russell Kirby

JRK/sb

Enclosures

7 9 0 4 0 1 7 3 6 0 3

900756

copy

December 14, 1978

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

Re: MUR 724 (78)

Dear Mr. Oldaker:

I have just been made aware of a letter from your office dated November 29, 1978, directed to Roger Allen, Treasurer of the Kirby for Congress Committee. Mr. Allen no longer serves as treasurer of the committee.

In connection with violation of 2 U.S.C. #441a(f) I deny there has been any excessive contribution. In two cases I personally paid the notes in question. In the other two cases both husbands and wives were involved and the contributions on that basis were not excessive.

In connection with violation of 2 U.S.C. #434(b) (12) I contend I have no obligation to Cook, Ruef and Spann and you have been so notified of my reasons for so contending.

Sincerely yours,

J. Russell Kirby

JRK/sb

7 9 0 4 0 1 2 3 6 0 4

copy

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

TELEPHONE
919/243-8141

October 30, 1978

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 724 (78)

Dear Mr. Oldaker:

The Cook, Ruef and Spann claim hasn't been filed recently because I don't consider they have a claim. They must have acceded to that contention because I have heard nothing from them in months.

You can be 100% assured that I will contest to the last court any effort to collect that disputed claim. I contend they would owe me money on a proper accounting, though I shall never press any such claim. I am only too willing to forget the whole thing as a nightmare.

I invite your attention to the ruling in Louchheim vs. Carson, 35 N. C. App. 299 et seq. which is enclosed.

Sincerely yours,

J. Russell Kirby (sab)

J. Russell Kirby

JRK:sab

Enclosures

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

USA 15c

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 19, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Russell Kirby
Kirby & Clark
206 N. Tarboro St.
P.O. Box 249
Wilson, N. Carolina 27893

Re: MUR 724 (78)

Dear Mr. Kirby:

Pursuant to your conversation of January 2, 1979, with a staff attorney, enclosed please find information and instructions regarding debt settlement statements required to be submitted under 11 CFR 114.10. Also enclosed is a copy of the last report filed by the Kirby for Congress Committee ("the Committee") showing an outstanding obligation of $1,999.02 to Cook, Ruef, Spann & Co.

The debt settlement statement, along with copies of the refund checks to Mr. Exum Scott, Mr. Hubert Scott, Mr. Carson Barnes, and Dr. James Etheridge of $100, $50, $52, $50, respectively, in excess contributions to the Committee, must be submitted to the Commission within ten (10) days of your receipt of this letter. If we do not receive those materials in that time, the Commission may take further action against the Committee. Please note that any refund of an excessive contribution by you, personally, must be reported to the Commission as a contribution in that amount from the candidate to the Committee.

If you have any questions concerning the enclosed information, please contact Ms. Marsha Gentner, the attorney assigned to this matter, at 202-523-4060.

Sincerely,

William C. Oldaker
General Counsel

Enclosures

7 9 0 4 0 1 3 3 6 0 7

DEBT SETTLEMENT

2 U.S.C. § 434(b) (12) and 11 CFR 104.8(a) require the continuous reporting of debts and obligations and call for a statement by the candidate/committee as to the circumstances and conditions under which a debt is extinguished. Section 100.4 (a) (6) of the regulations provides that "the extension of credit for a length of time beyond normal business or trade practice" is a contribution unless the creditor has made "a commercially reasonable attempt to collect the debt".

The Commission's regulations, part 114.10, provide that a corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the extension of credit is in the ordinary course of the corporation's business and that the terms of credit are substantially similar to extensions to nonpolitical debtors.

If a corporate debt is settled in a commercially reasonable manner, the settlement will not be considered a prohibited corporate contribution under 2 U.S.C. § 441b(a). However, the debtor must file a statement of settlement with the Commission prior to the termination of reporting status, and the settlement is subject to Commission review. If a corporate creditor's debt settlement is not approved by the Commission, the amount of the debt forgiven is a contribution-in-kind under the Act, thereby giving rise to a 2 U.S.C. § 441b (a) violation.

Information to be submitted by debtor and/or creditor:

- -whether credit was extended in the ordinary course of the creditor's business;
- -whether credit was extended on terms substantially similar to extensions to non-political debtors;
- -whether the debtor has undertaken all commercially reasonable efforts to satisfy the outstanding debt;
- -whether the creditor has pursued its customary remedies in order to collect on the debts;
- -whether the creditor is in agreement with the terms of settlement.

Submission of the following information may be accepted as an adequate debt settlement statement:

a) Initial terms of credit with the corporate creditor
b) Steps taken by the debtor to extinguish the debt
c) Remedies pursued by the creditor
d) Terms/circumstances of the settlement of the debt

If the debt is a disputed one, include the basis of the dispute and how the matter was settled.

M-C M724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered .... ¢
- ☑ Show to whom, date, and address of delivery .. ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery . $
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

J Russell Kirby

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943257	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4 Sharon Bryant

DATE OF DELIVERY

JAN 29 1979

POSTMARK

USPS WILSON, N.C. JAN 29 1979

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

☆GPO: 1977-0-249-595

7 9 0 4 0 1 0 2 3 9 0 0

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO CHARLES STEELE

FROM: MARJORIE W. EMMONS MWE

DATE: JANUARY 15, 1979

SUBJECT: MUR 724 (78) - Interim Investigative Report dated 1-12-79; Received in OCS 1-12-79, 10:46

The above-named document was circulated on a 24 hour no-objection basis at 3:30, January 12, 1979.

The Commission Secretary's Office has received no objections to the Interim investigative Report as of 4:00, this date.

January 12, 1979

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the attached Interim Invest Report on MUR 724 distributed to the Commission.

Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Kirby for Congress) MUR 724 (78)
Committee)

INTERIM INVESTIGATIVE REPORT

On November 24, 1978, the Commission voted to take no further action against the Kirby for Congress Committee ("the Committee") conditioned on the receipt from the Committee of a satisfactory debt settlement statement concerning an outstanding Committee debt, and copies of cancelled checks of refunds of excessive contributions to four individual contributors. A letter informing the Committee of this action was received by it on December 4, 1978.

Mr. J. Russell Kirby, the candidate, has contacted this Office. As the Committee no longer exists in any practical sense, Mr. Kirby has taken on the responsibility of handling the remaining Committee obligations. Mr. Kirby was not familiar with the procedure involved in filing a debt settlement statement. Instructions on how to prepare such a statement, as well as the names of the four individuals who made excessive contributions and the amounts of those excesses, are being sent to Mr. Kirby. The Committee (Mr. Kirby) has been given ten days from receipt of that letter to comply with the conditions required by the Commission.

1/12/79
Date

William C. Oldaker
General Counsel

5946

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P.O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

TELEPHONE

FEDERAL ELECTION COMMISSION

'78 DEC 21 AM 11:36

December 14, 1978

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

800578

Re: MUR 724 (78)

Dear Mr. Oldaker:

I have just been made aware of a letter from your office dated November 29, 1978, directed to Roger Allen, Treasurer of the Kirby for Congress Committee. Mr. Allen no longer serves as treasurer of the committee.

In connection with violation of 2 U.S.C. #441a(f) I deny there has been any excessive contribution. In two cases I personally paid the notes in question. In the other two cases both husbands and wives were involved and the contributions on that basis were not excessive.

In connection with violation of 2 U.S.C. #434(b) (12) I contend I have no obligation to Cook, Ruef and Spann and you have been so notified of my reasons for so contending.

Sincerely yours,

J. Russell Kirby

J. Russell Kirby

JRK/sb

7 9 0 4 0 1 2 3 6 1 3

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P.O. BOX 249
WILSON, NORTH CAROLINA 27893

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS MWE

DATE: DECEMBER 15, 1978

SUBJECT: MUR 724 - Interim Conciliation Report dated 12-12-78; Received in OCS 12-14-78, 2:07

The above-named document was circulated to the Commission on a 24-hour no-objection basis at 10:00, December 15, 1978.

There were no objections to the Interim Conciliation Report.

7 9 0 4 0 1 2 3 6 1 5

December 14, 1978

MEMORANDUM TO: Marge Emmons

RROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the attached Interim Concil Report on MUR 724 distributed to the Commission.

Thank you.

79040123615

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Kirby for Congress Committee)

INTERIM CONCILIATION REPORT

On November 20, 1978, the Commission voted to take no further action against the Kirby for Congress Committee ("the Committee") conditioned on the filing by the Committee of a debt settlement statement concerning a Committee obligation to Cook, Spann, Ruef and Company, and the refund of excessive contributions received by the Committee.

A letter informing the Committee of this determination and the requirements thereof was mailed to the Committee on November 29. The General Counsel's Office is currently awaiting a response by the Committee, which is due on December 15, 1978.

12/12/78
Date

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roger Allen
Treasurer
Kirby for Congress Committee
Post Office Box 249
Wilson, North Carolina 27893

Re: MUR 724 (78)

Dear Mr. Allen:

As you know, on October 16, 1978, the Federal Election Commission found reason to believe the Kirby for Congress Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from four individuals, and 2 U.S.C. § 434(b)(12) by failing to continually report an outstanding obligation to Cook, Spann, Ruef and Company, along with the circumstances of its extinguishment.

On November 24, 1978, the Commission directed that the Committee refund the excessive contributions accepted by the Committee and submit a debt settlement statement detailing the circumstances under which the aforementioned outstanding debt was extinguished.

Copies of the refund checks to Mr. Exum Scott, Mr. Hubert Scott, Mr. Carson Barnes, and Dr. James Etheridge, to be followed by copies of the cancelled checks when received, along with the debt settlement statement should be submitted to the Office of General Counsel within ten days of your receipt of this letter.

We look forward to the receipt of this information so that this matter may be resolved. If you have any questions concerning these matters, please contact Ms. Marsha Gentner at (202) 523-4060.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

79040103619

MC 3734

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3811, Apr. 1977

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ______¢
- ✓ Show to whom, date, and address of delivery ______¢
- ☐ RESTRICTED DELIVERY Show to whom and date delivered ______¢
- ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $______

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr Rogers Allen

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438492	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Sharon Bryant

DATE OF DELIVERY
DEC - 4 1978

POSTMARK
DEC 4 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO 1977-0-249-595

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Exum Scott
Route #3
Kenly, North Carolina 27542

Re: MUR 724 (78)

Dear Mr. Scott:

On November 24 , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

[signature]

Oldaker
nsel

MUR 724 MG

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered ... ¢
☐ Show to whom, date, and address of delivery ... ¢
☐ RESTRICTED DELIVERY Show to whom and date delivered ... ¢
☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $___
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Exum Scott

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
[illegible]

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☒ Addressee ☐ Authorized agent

4. Exum Scott

DATE OF DELIVERY 12-1-78

POSTMARK KENLY NC DEC 1 1978 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO 1977-0-249-595

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Carson Barnes
c/o Carson B. Barnes Farms
Route 1, Box 131
Spring Hope, North Carolina 27882

Re: MUR 724 (78)

Dear Mr. Barnes:

On November 24 , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

cc: Kirby for Congress Committee

7 9 0 4 0 1 2 3 6 2 1

MUR 724

MUR 724 MG

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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- ☐ RESTRICTED DELIVERY
Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Ms. Carson Barnes

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	944085	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. S Barnes

DATE OF DELIVERY
12-1-78

POSTMARK
DEC 1 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

GPO: 1977 - 0 - 249-595

7 9 0 4 0 1 2 3 5 2 2

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Hubert C. Scott
Route #3
Kenly, North Carolina 27542

Re: MUR 724 (78)

Dear Mr. Scott:

On November 24, 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

cc: Kirby for Congress Committee

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

November 29, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. James E. Etheridge
911 Raleigh Road
Wilson, North Carolina 27893

Re: MUR 724 (78)

Dear Dr. Etheridge:

On November 24, 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

cc: David S. Orcutt
Lucas, Rand, Rose, Meyer,
Jones & Orcutt
Kirby for Congress Committee

79040123625

724 Lentry

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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- ☒ Show to whom, date, and address of delivery .... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery $____
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
David S Orcutt

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	438497	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. X

DATE OF DELIVERY
DEC 4 1978

POSTMARK
WILSON NC
DEC
4
1978
USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO 1977—0—249-595

MG M724

PS Form 3811, Apr 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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- ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Dr. James E. Etheridge

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943016	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. James E. Etheridge

DATE OF DELIVERY: DEC 4 - 1978 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆GPO: 1977—0—249-595

MG MAR 72

PS Form 3811, Apr 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

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- ☐ RESTRICTED DELIVERY Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Hubert C. Scott

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943017	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☒ Addressee ☐ Authorized agent

4. Hubert C. Scott

DATE OF DELIVERY: 12-4-78 POSTMARK: DEC 4 1978 U.S.P.O.

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆GPO: 1977—0—249-595

November 21, 1978

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the ataached General Counsel's Report on MUR 724 distributed to the Commission onaa 48 hour tally basis.

Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 724 (78)
Kirby for Congress Committee	)	
et al.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 24, 1978, the Commission determined by a vote of 5-0 to adopt the following recommendations, as set forth in the General Counsel's Report dated November 20, 1978, regarding the above-captioned matter:

1. Take no further action against the Kirby for Congress Committee conditioned on the refund by the Committee of the excessive contributions received and upon the filing by the Committee of a satisfactory debt settlement statement concerning the obligation to Cook, Spann, Ruef and Company.

2. Take no further action against Hubert C. Scott, Exum Scott, James E. Etheridge, and Carson Barnes.

3. Send the letters attached to the above-named report.

Voting for this determination were Commissioners Aikens, Tiernan, McGarry, Thomson, and Harris.

Attest:

11-24-78
Date

Margaret E. Chaney
for Marjorie W. Emmons, Secretary to the Commissions

Received in Office of Commission Secretary: 11-21-78, 10:10
Circulated on 48 hour vote basis: 11-21-78, 3:30

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

78 NOV 21 A10: 10

In the Matter of)
)
) MUR 724 (78)
Kirby for Congress Committee,)
et al.)

GENERAL COUNSEL'S REPORT

SUMMARY OF ALLEGATIONS

During the course of a random audit of the Kirby for Congress Committee ("the Committee"), the Audit Division found that four individuals had each loaned the Committee $1,000, which were subsequently converted to direct contributions and, therefore, never repaid by the Committee. These same four individuals each made additional contributions to the Committee. These facts raised the possibility that these four people had exceeded individual contribution limits in violation of 2 U.S.C. § 441a(a)(1)(A), and the Committee had accepted such contributions in violation of 2 U.S.C. § 441a(f).

The auditors also discovered that the Committee had an outstanding debt of $1,999.02 to a corporation when the last Committee report was filed on April 5, 1978. This raised the possibility that the Committee and the candidate, James Russell Kirby, had violated 2 U.S.C. § 434(b)(12) which requires a candidate and his committee to continue reporting the nature and amount of an outstanding campaign related debt until it is extinguished, and the circumstances of its extinguishment.

On October 16, 1978, the Commission found reason to believe that Hubert S. Scott, Exum Scott, James E. Etheridge, and Carson

Barnes apparently violated 2 U.S.C. § 441a(a)(1)(A) by making contributions to the Kirby for Congress Committee in excess of $1,000 per election, that the Kirby for Congress Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions, and that James R. Kirby and the Kirby for Congress Committee apparently violated § 434(b)(12) by not continuing to report the amount, nature, and circumstances of extinguishment of an outstanding campaign related debt.

EVIDENCE

I. The Excessive Contributions

According to information obtained by the auditors, and reports and supporting documents submitted by the Committee, on June 8, 1976, Mr. Hubert C. Scott and Mr. Exum Scott each made a loan of $1,000 to the Committee. On June 10, 1976, Dr. James E. Etheridge loaned the Committee $1,000, and on June 28, 1976, Mr. Carson Barnes also loaned the Committee $1,000. The sources of all four of these loans were four promissory notes for $1,000, made out to the Southern National Bank of North Carolina. (See Attachments I - IV). Mr. E. Scott, Mr. H. Scott, Dr. Etheridge, and Mr. Barnes each signed one of the notes on the first line marked "borrower," making each individual a maker of the note he signed. At the same time, Mr. Kirby, the candidate, signed his name only on each of the notes, on the second line marked "borrower." Under UCC § 3-118(e), when two people sign a promissory note in the same capacity and as part of the same transaction, either party is liable for the entire amount of the loan, unless the instrument specifies otherwise. Thus, Mr. Kirby's signature did not affect the liability of Mr.

E. Scott, Mr. H. Scott, Mr. Barnes, or Dr. Etheridge on the promissory note that each signed. 1/

Although the $1,000 each from the four individuals were originally designated as loans to the Committee, neither Mr. E. Scott, Mr. H. Scott, Dr. Etheridge nor Mr. Barnes was ever repaid that amount by the Committee. The candidate, Mr. Kirby, did "assume" the bank loan for Mr. E. Scott, Mr. H. Scott, and Mr. Barnes, on June 9, 1977. However, the fact that Mr. Kirby later assumed some of the individuals' liability did not satisfy the Committee's liability to repay the loans to it from these three individuals, as Mr. Kirby was also liable on the promissory notes due to his signature on them. Mr. Kirby, then, did nothing more than "assume" an obligation which he already had. 2/

1/ Because of this, it does not matter whether Mr. Kirby signed each note with the intention of becoming a co-maker or whether he signed as an endorser. In either case, the maker/contributor would still be liable for the entire amount of the promissory note. U.S.C. §§ 3-118(e), 3-415(2). 2 U.S.C. § 431(e)(5)(G)(ii) does not apply because this transaction was not an endorsement or guarantee of a bank loan directly made to the campaign Committee. This was a separate transaction, borrowing funds that were later contributed by the makers of the notes in $1,000 amounts.

2/ Nor can it be argued that Mr. Kirby signed the promissory notes as an agent for the Committee, making his assumption of the liability on the three notes a repayment on behalf of the Committee of the loans from these three individuals. Under U.C.C. § 3-403(2)(a), an agent who signs an instrument without signing his principal's name or a designation that he is signing in a representative capacity, is personally liable on the instrument and parol evidence is inadmissable to demonstrate otherwise.

In any case, the 1977 year-end report filed by the Committee on March 15, 1978, shows all the loans by the four individuals as having been converted to direct contributions of $1,000 each to the Committee, although Dr. Etheridge maintains that he has not relinquished his rights against Mr. Kirby in securing repayment of the $1,000. 3/

In addition to their $1,000 contributions to the Committee, Mr. E. Scott, Mr. H. Scott, Dr. Etheridge and Mr. Barnes also made additional contributions to the Committee. Hubert C. Scott and Mrs. Scott had contributed $100 to the Committee on March 26, 1976, thus bringing Mr. H. Scott's total contributions to the Committee for August 17, 1976, primary election to $1,050. Exum Scott contributed $100 to the Committee on February 2, 1976, bringing his total contributions for the primary election to $1,100. Dr. James E. Etheridge and his wife contributed $100 to the Committee on April 13, 1976, thus making his total contribution to the Committee for the 1976 primary $1,050. Mr. Carson Barnes contributed a total of $1,052 to the Committee for the primary election, as he and his wife also bought a jubilee ticket of $104 from the Committee on May 28, 1976. Because the amount by which these four respondents exceeded permissable limits is de minimis, and since each respondent has been informed of individual contribution limits, the Office of

---

3/ It is irrelevant whether or not the loans by these four individuals were actually converted to direct contributions since under 2 U.S.C. § 431(e)(1)(A) a loan by an individual to a political committee is a "contribution" within the meaning of the Federal Election Campaign Act of 1971, as amended.

General Counsel recommends that the Commission take no further action against respondents Hubert Scott, Exum Scott, James Etheridge, and Carson Barnes. The General Counsel's Office also recommends that the Commission take no further action against the Committee on the condition that the Committee refund the excessive contributions.

2 U.S.C. § 434(b)(12) and 11 C.F.R. § 104.8 require political committees to continually report to the Commission debts and obligations still owing after the election until those debts are extinguished, and to report the circumstances and conditions under which the debts are finally satisfied. The Committee filed its last report on April 5, 1978, covering its 1977 activities relevant to the 1976 primary election. Page three of the report shows an outstanding obligation to Cook, Ruef, Spann and Company of $1,999.02. Mr. Kirby, in a letter received on November 2, 1978, explained that the debt in question is a disputed one that he believes is not currently owed and that Cook, Spann, Ruef and Company apparently accept this position because he has not heard from them in months.

The General Counsel's Office therefore recommends that the Commission take no further action against the Committee, conditioned on the receipt by the Commission of a satisfactory debt settlement statement from the Committee.

RECOMMENDATIONS

1. Take no further action against the Kirby for Congress Committee conditioned on the refund by the Committee of the excessive contributions received and upon the filing by the Committee of a satisfactory debt settlement statement concerning the obligation to Cook, Spann, Ruef and Company.

2. Take no further action against Hubert C. Scott, Exum Scott, James E. Etheridge, and Carson Barnes.

3. Send the attached letters.

11/20/78

Date

William C. Oldaker
General Counsel

Attachments:

Attachments I - IV (Individual Bank Notes)
Letters to Respondents

Attachment I

NEGOTIABLE PROMISSORY NOTE
LOAN CONTRACT AND FEDERAL DISCLOSURES

6-1[illegible], 19 76 — DATE OF EXECUTION AND DELIVERY

$ 1,000.00 — AMOUNT OF NOTE

BORROWER(S) - NAME AND ADDRESS

James E. Etheridge
911 Raleigh Road
Wilson, N.C. 27893.

TELEPHONE

ACCOUNT NUMBER	NOTE NUMBER
138701	0610760

FOR VALUE RECEIVED, THE UNDERSIGNED BORROWER(S), JOINTLY AND/OR SEVERALLY PROMISE TO PAY TO THE ORDER OF

SOUTHERN NATIONAL BANK OF NORTH CAROLINA
AT ITS OFFICES IN
Wilson N.C. 27893 (ZIP CODE)

(HEREINAFTER TERMED "LENDER") THE SUM OF One thousand AND 00/100THS DOLLARS, WITH INTEREST FROM DATE, OR FROM MATURITY IF PREPAID, AT THE RATE OF 9.0 PER-CENT PER ANNUM UNTIL PAID:

☑ PAYABLE IN FULL 180 DAYS FROM DATE ON 12-10-76; OR

☐ PAYABLE ON DEMAND; OR

☐ PAYABLE IN ______ (NUMBER) MONTHLY INSTALLMENTS OF $______ EACH,

THE FIRST PAYABLE ON OR BEFORE ______, 19 ______, WITH OTHERS PAYABLE ON OR BEFORE THE SAME DAY OF EACH SUCCEEDING MONTH THEREAFTER, AND THE LAST INSTALLMENT PAYABLE ON OR BEFORE ______ 19__ IN THE AMOUNT OF $______ (IF THE LAST INSTALLMENT IS MORE THAN TWICE THE AMOUNT OF OTHERS, IT IS A BALLOON PAYMENT AND WILL BE PAYABLE IN FULL ON THE DATE SHOWN); OR

☐ PAYABLE $______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__

BASIC TERMS OF LOAN CONTRACT	
1. LOAN PRINCIPAL	$ 1,000.00
2. CREDIT LIFE INS. PREMIUM	
3. DISABILITY INS. PREMIUM	
4. OTHER ______	
5. LESS: PREPAID FINANCE CHARGE	
6. AMOUNT FINANCED	$ 1,000.00
7. FINANCE CHARGE (TOTAL)	$ 45.00
(A) INTEREST $ 45.00	
(B) MINIMUM CHARGE ______	
(C) ______ ______	
8. TOTAL OF PAYMENTS	$ 1,045.00
9. ANNUAL PERCENTAGE RATE 9.0 %	

~~(PAYMENT TERMS NOT CHECKED ARE DELETED) TOGETHER WITH A CHARGE OF FIVE PERCENT (5%) OF A PAYMENT OR PAYMENTS IN DEFAULT FOR TEN (10) OR MORE DAYS.~~ FURTHER, IF SUIT IS INSTITUTED TO ENFORCE COLLECTION OF ANY UNPAID BALANCE OF THE LOAN UPON DEFAULT OF BORROWER(S), SAID BORROWER(S) AGREES TO PAY FOR LENDER'S LEGAL EXPENSES AND FIFTEEN PERCENT (15%) OF THE SUM OF THE UNPAID PRINCIPAL AND ALL INTEREST DUE THEREON AT THE TIME SUIT IS INSTITUTED AS REASONABLE ATTORNEY'S FEE OF LENDER.

EACH OF THE UNDERSIGNED, WHETHER MAKER-BORROWER(S), SURETIES, ENDORSERS, OR GUARANTORS AND ALL OTHERS WHO MAY BECOME LIABLE FOR ALL OR ANY PART OF THE OBLIGATIONS EVIDENCED HEREBY, DO JOINTLY AND/OR SEVERALLY WAIVE PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND/OR OF DISHONOR AND ALSO NOTICE OF ACCELERATION OF MATURITY ON DEFAULT OR OTHERWISE. FURTHER THEY AGREE THAT LENDER MAY, FROM TIME TO TIME, EXTEND OR RENEW THIS NOTE FOR ANY PERIOD OF TIME AND GRANT ANY RELEASES, COMPROMISES OR INDULGENCES WITH RESPECT TO THE NOTE OR ANY EXTENSION OR RENEWAL THEREOF, OR TO ANY PARTY LIABLE THEREUNDER OR HEREUNDER, ALL WITHOUT NOTICE OR CONSENT OF ANY OF THE UNDERSIGNED AND WITHOUT AFFECTING THE LIABILITY OF THE UNDERSIGNED. THE UNDERSIGNED, FURTHER, WAIVE NOTICE OF ACCEPTANCE OF THEIR GUARANTY AND EXPRESSLY AGREE TO PAY ALL AMOUNTS HEREUNDER, UPON DEMAND, WITHOUT REQUIRING ANY ACTION OR PROCEEDING AGAINST THE PRINCIPAL MAKER-BORROWER(S).

THIS NEGOTIABLE PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS, TERMS, UNDERTAKINGS AND RIGHTS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF.

CREDIT LIFE AND DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. NO CHARGE IS MADE FOR CREDIT INSURANCE AND NO CREDIT INSURANCE IS PROVIDED UNLESS THE BORROWER TO BE INSURED SIGNS THE APPROPRIATE STATEMENT BELOW:

THE COST OF CREDIT LIFE AND DISABILITY INSURANCE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE AND DISABILITY INSURANCE:

X______ (INSURED BORROWER) (SEAL) (DATE)

THE COST OF CREDIT LIFE INSURANCE ALONE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE INSURANCE ONLY:

X______ (INSURED BORROWER) (SEAL) (DATE)

ANY UNPAID BALANCE OF THE TOTAL OF PAYMENTS MAY BE PREPAID IN FULL BY CASH, A NEW LOAN, REFINANCING OR OTHERWISE BEFORE MATURITY. PROVIDED ALL PAYMENTS ARE CURRENT AT THE TIME OF PREPAYMENT, LENDER MAY, AT ITS OPTION, MAKE A PARTIAL REFUND OF FINANCE CHARGES WHICH HAVE BEEN PREPAID AND UNEARNED, COMPUTED UNDER THE RULE OF 78'S.

WITNESS MY (OUR) HAND(S) AND SEAL(S):

THE UNDERSIGNED BORROWERS DO HEREWITH ACKNOWLEDGE RECEIPT OF THE DISCLOSURES CONTAINED HEREIN. THEY FURTHER ACKNOWLEDGE THAT THIS NOTE WITH DISCLOSURES WERE FILLED IN PRIOR TO THEIR EXECUTING THE SAME

✓ James E. Etheridge (SEAL) — BORROWER

J. Russell Kirby (SEAL) — BORROWER

______ (SEAL) — BORROWER

NOT [illegible]

[signature] — WITNESS

______ WITNESS

______ WITNESS

Attachment II

NEGOTIABLE PROMISSORY NOTE
LOAN CONTRACT AND FEDERAL DISCLOSURES

6 28, 19 76 — DATE OF EXECUTION / DELIVERY — $ 1,000.— AMOUNT OF NOTE

FOR VALUE RECEIVED, THE UNDERSIGNED BORROWER(S), JOINTLY AND/OR SEVERALLY PROMISE TO PAY TO THE ORDER OF

SOUTHERN NATIONAL BANK OF NORTH CAROLINA
AT ITS OFFICES IN
Wilson N.C. 27893 (ZIP CODE)

(HEREINAFTER TERMED "LENDER") THE SUM OF One Thousand AND no /100THS DOLLARS, WITH INTEREST FROM DATE, OR FROM MATURITY IF PREPAID, AT THE RATE OF 9.0 PER-CENT PER ANNUM UNTIL PAID;

☒ PAYABLE IN FULL 180 DAYS FROM DATE ON 12-28-76; OR
☐ PAYABLE ON DEMAND; OR
☐ PAYABLE IN ______ (NUMBER) MONTHLY INSTALLMENTS OF $______ EACH,

THE FIRST PAYABLE ON OR BEFORE ______, 19__, WITH OTHERS PAYABLE ON OR BEFORE THE SAME DAY OF EACH SUCCEEDING MONTH THEREAFTER, AND THE LAST INSTALLMENT PAYABLE ON OR BEFORE ______, 19__ IN THE AMOUNT OF $______. (IF THE LAST INSTALLMENT IS MORE THAN TWICE THE AMOUNT OF OTHERS, IT IS A BALLOON PAYMENT AND WILL BE PAYABLE IN FULL ON THE DATE SHOWN); OR

☐ PAYABLE $______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__
$______ ON OR BEFORE ______ 19__

(PAYMENT TERMS NOT CHECKED ARE DELETED) TOGETHER WITH A CHARGE OF FIVE PERCENT (5%) OF A PAYMENT OR PAYMENTS IN DEFAULT FOR TEN (10) OR MORE DAYS. FURTHER, IF SUIT IS INSTITUTED TO ENFORCE COLLECTION OF ANY UNPAID BALANCE OF THE LOAN UPON DEFAULT OF BORROWER(S), SAID BORROWER(S) AGREES TO PAY FOR LENDER'S LEGAL EXPENSES AND FIFTEEN PERCENT (15%) OF THE SUM OF THE UNPAID PRINCIPAL AND ALL INTEREST DUE THEREON AT THE TIME SUIT IS INSTITUTED AS REASONABLE ATTORNEY'S FEE OF LENDER.

EACH OF THE UNDERSIGNED, WHETHER MAKER-BORROWER(S), SURETIES, ENDORSERS, OR GUARANTORS AND ALL OTHERS WHO MAY BECOME LIABLE FOR ALL OR ANY PART OF THE OBLIGATIONS EVIDENCED HEREBY, DO JOINTLY AND/OR SEVERALLY WAIVE PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND/OR OF DISHONOR AND ALSO NOTICE OF ACCELERATION OF MATURITY ON DEFAULT OR OTHERWISE. FURTHER THEY AGREE THAT LENDER MAY, FROM TIME TO TIME, EXTEND OR RENEW THIS NOTE FOR ANY PERIOD OF TIME AND GRANT ANY RELEASES, COMPROMISES OR INDULGENCES WITH RESPECT TO THE NOTE OR ANY EXTENSION OR RENEWAL THEREOF, OR TO ANY PARTY LIABLE THEREUNDER OR HEREUNDER, ALL WITHOUT NOTICE OR CONSENT OF ANY OF THE UNDERSIGNED AND WITHOUT AFFECTING THE LIABILITY OF THE UNDERSIGNED. THE UNDERSIGNED, FURTHER, WAIVE NOTICE OF ACCEPTANCE OF THEIR GUARANTY AND EXPRESSLY AGREE TO PAY ALL AMOUNTS HEREUNDER, UPON DEMAND, WITHOUT REQUIRING ANY ACTION OR PROCEEDING AGAINST THE PRINCIPAL MAKER-BORROWER(S).

THIS NEGOTIABLE PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS, TERMS, UNDERTAKINGS AND RIGHTS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF.

WITNESS MY(OUR) HAND(S) AND SEAL(S):

THE UNDERSIGNED BORROWERS DO HEREWITH ACKNOWLEDGE RECEIPT OF THE DISCLOSURES CONTAINED HEREIN. THEY FURTHER ACKNOWLEDGE THAT THIS NOTE WITH DISCLOSURES WERE FILLED IN PRIOR TO THEIR EXECUTING THE SAME.

Carson B Barnes (SEAL) BORROWER
J. Russell Kirby (SEAL) BORROWER
______ (SEAL) BORROWER

NOT NEGOTIABLE

BORROWER(S) - NAME AND ADDRESS
Carson B. Barnes
c/o Carson B. Barnes Farms
Route 1
Spring Hope, N.C.

TELEPHONE 459-3101
ACCOUNT NUMBER 138833 NOTE NUMBER 0628760

1. LOAN PRINCIPAL	$ 1,000.00
2. CREDIT LIFE INS. PREMIUM	
3. DISABILITY INS. PREMIUM	
4. OTHER	
5. LESS: PREPAID FINANCE CHARGE	
6. AMOUNT FINANCED	$ 1,000.00
7. FINANCE CHARGE (TOTAL)	$ 45.00
(A) INTEREST	$ 45.00
(B) MINIMUM CHARGE	
(C)	
8. TOTAL OF PAYMENTS	$ 1,045.00
9. ANNUAL PERCENTAGE RATE	9.0 %

BASIC TERMS OF LOAN CONTRACT

CREDIT LIFE AND DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. NO CHARGE IS MADE FOR CREDIT INSURANCE AND NO CREDIT INSURANCE IS PROVIDED UNLESS THE BORROWER TO BE INSURED SIGNS THE APPROPRIATE STATEMENT BELOW:

THE COST OF CREDIT LIFE AND DISABILITY INSURANCE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE AND DISABILITY INSURANCE:

X ______ (INSURED BORROWER) (SEAL) (DATE)

THE COST OF CREDIT LIFE INSURANCE ALONE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE INSURANCE ONLY:

X ______ (INSURED BORROWER) (SEAL) (DATE)

ANY UNPAID BALANCE OF THE TOTAL OF PAYMENTS MAY BE PREPAID IN FULL BY CASH, A NEW LOAN, REFINANCING OR OTHERWISE BEFORE MATURITY. PROVIDED ALL PAYMENTS ARE CURRENT AT THE TIME OF PREPAYMENT, LENDER MAY, AT ITS OPTION, MAKE A PARTIAL REFUND OF FINANCE CHARGES WHICH HAVE BEEN PREPAID AND UNEARNED, COMPUTED UNDER THE RULE OF 78'S.

W. Harold Perry WITNESS
______ WITNESS
______ WITNESS

DUPLICATE — SOUTHERN NATIONAL BANK FILE

ATTACHMENT III

NEGOTIABLE PROMISSORY N[redacted]
LOAN CONTRACT AND FEDERAL DISCLOSURES

6-8[redacted], 1976 — DATE OF EXECUTION AND DELIVERY

$ 1,000.00 — AMOUNT OF NOTE

BORROWER(S) - NAME AND ADDRESS	
Exum Scott	
Rt. # 3	
Kenly, N C, 27542	
TELEPHONE	
ACCOUNT NUMBER 138646	NOTE NUMBER 0608760

FOR VALUE RECEIVED, THE UNDERSIGNED BORROWER(S), JOINTLY AND/OR SEVERALLY PROMISE TO PAY TO THE ORDER OF

SOUTHERN NATIONAL BANK OF NORTH CAROLINA
AT ITS OFFICES IN

Wilson N.C. 27893 (ZIP CODE)

(HEREINAFTER TERMED "LENDER") THE SUM OF One Thousand AND 00/100THS DOLLARS, WITH INTEREST FROM DATE, OR FROM MATURITY IF PREPAID, AT THE RATE OF 9.0 PER-CENT PER ANNUM UNTIL PAID.

☒ PAYABLE IN FULL 180 DAYS FROM DATE ON 12-8-76; OR

☐ PAYABLE ON DEMAND; OR

☐ PAYABLE IN ______ (NUMBER) MONTHLY INSTALLMENTS OF $______ EACH,

THE FIRST PAYABLE ON OR BEFORE ______, 19___, WITH OTHERS PAYABLE ON OR BEFORE THE SAME DAY OF EACH SUCCEEDING MONTH THEREAFTER, AND THE LAST INSTALLMENT PAYABLE ON OR BEFORE ______, 19___ IN THE AMOUNT OF $______ (IF THE LAST INSTALLMENT IS MORE THAN TWICE THE AMOUNT OF OTHERS, IT IS A BALLOON PAYMENT AND WILL BE PAYABLE IN FULL ON THE DATE SHOWN); OR

☐ PAYABLE $______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___

(PAYMENT TERMS NOT CHECKED ARE DELETED) TOGETHER WITH A CHARGE OF FIVE PERCENT (5%) OF A PAYMENT OR PAYMENTS IN DEFAULT FOR TEN (10) OR MORE DAYS. FURTHER, IF SUIT IS INSTITUTED TO ENFORCE COLLECTION OF ANY UNPAID BALANCE OF THE LOAN UPON DEFAULT OF BORROWER(S), SAID BORROWER(S) AGREES TO PAY FOR LENDER'S LEGAL EXPENSES AND FIFTEEN PERCENT (15%) OF THE SUM OF THE UNPAID PRINCIPAL AND ALL INTEREST DUE THEREON AT THE TIME SUIT IS INSTITUTED AS REASONABLE ATTORNEY'S FEE OF LENDER.

EACH OF THE UNDERSIGNED, WHETHER MAKER-BORROWER(S), SURETIES, ENDORSERS, OR GUARANTORS AND ALL OTHERS WHO MAY BECOME LIABLE FOR ALL OR ANY PART OF THE OBLIGATIONS EVIDENCED HEREBY, DO JOINTLY AND/OR SEVERALLY WAIVE PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND/OR OF DISHONOR AND ALSO NOTICE OF ACCELERATION OF MATURITY ON DEFAULT OR OTHERWISE. FURTHER THEY AGREE THAT LENDER MAY, FROM TIME TO TIME, EXTEND OR RENEW THIS NOTE FOR ANY PERIOD OF TIME AND GRANT ANY RELEASES, COMPROMISES OR INDULGENCES WITH RESPECT TO THE NOTE OR ANY EXTENSION OR RENEWAL THEREOF, OR TO ANY PARTY LIABLE THEREUNDER OR HEREUNDER, ALL WITHOUT NOTICE OR CONSENT OF ANY OF THE UNDERSIGNED AND WITHOUT AFFECTING THE LIABILITY OF THE UNDERSIGNED. THE UNDERSIGNED, FURTHER, WAIVE NOTICE OF ACCEPTANCE OF THEIR GUARANTY AND EXPRESSLY AGREE TO PAY ALL AMOUNTS HEREUNDER, UPON DEMAND, WITHOUT REQUIRING ANY ACTION OR PROCEEDING AGAINST THE PRINCIPAL MAKER-BORROWER(S).

THIS NEGOTIABLE PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS, TERMS, UNDERTAKINGS AND RIGHTS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF.

WITNESS MY(OUR) HAND(S) AND SEAL(S):

THE UNDERSIGNED BORROWERS DO HEREWITH ACKNOWLEDGE RECEIPT OF THE DISCLOSURES CONTAINED HEREIN. THEY FURTHER ACKNOWLEDGE THAT THIS NOTE WITH DISCLOSURES WERE FILLED IN PRIOR TO THEIR EXECUTING THE SAME.

✓ Exum Scott (SEAL) BORROWER

J. Russell King (SEAL) BORROWER

______ (SEAL) BORROWER

BASIC TERMS OF LOAN CONTRACT

1. LOAN PRINCIPAL		$ 1,000.00
2. CREDIT LIFE INS. PREMIUM		
3. DISABILITY INS. PREMIUM		
4. OTHER		
5. LESS: PREPAID FINANCE CHARGE		
6. AMOUNT FINANCED		$ 1,000.00
7. FINANCE CHARGE (TOTAL)		$ 45.00
(A) INTEREST	$ 45.00	
(B) MINIMUM CHARGE		
(C)		
8. TOTAL OF PAYMENTS		$ 1,045.00
9. ANNUAL PERCENTAGE RATE		9.0 %

CREDIT LIFE AND DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. NO CHARGE IS MADE FOR CREDIT INSURANCE AND NO CREDIT INSURANCE IS PROVIDED UNLESS THE BORROWER TO BE INSURED SIGNS THE APPROPRIATE STATEMENT BELOW:

THE COST OF CREDIT LIFE AND DISABILITY INSURANCE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE AND DISABILITY INSURANCE:

X ______ (INSURED BORROWER) (SEAL) (DATE)

THE COST OF CREDIT LIFE INSURANCE ALONE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE INSURANCE ONLY:

X ______ (INSURED BORROWER) (SEAL) (DATE)

ANY UNPAID BALANCE OF THE TOTAL OF PAYMENTS MAY BE PREPAID IN FULL BY CASH, A NEW LOAN, REFINANCING OR OTHERWISE BEFORE MATURITY. PROVIDED ALL PAYMENTS ARE CURRENT AT THE TIME OF PREPAYMENT, LENDER MAY, AT ITS OPTION, MAKE A PARTIAL REFUND OF FINANCE CHARGES WHICH HAVE BEEN PREPAID AND UNEARNED, COMPUTED UNDER THE RULE OF 78'S.

______ WITNESS

______ WITNESS

______ WITNESS

ATTACHMENT IV

NEGOTIABLE PROMISSORY NOTE
LOAN CONTRACT AND FEDERAL DISCLOSURES

DATE OF EXECUTION & DELIVERY: 6-[illegible], 1976

AMOUNT OF NOTE: $ 1,000.00

FOR VALUE RECEIVED, THE UNDERSIGNED BORROWER(S), JOINTLY AND/OR SEVERALLY PROMISE TO PAY TO THE ORDER OF

SOUTHERN NATIONAL BANK OF NORTH CAROLINA
AT ITS OFFICES IN

Wilson N.C. 27893 (ZIP CODE)

(HEREINAFTER TERMED "LENDER") THE SUM OF One Thousand AND no/100THS DOLLARS, WITH INTEREST FROM DATE, OR FROM MATURITY IF PREPAID, AT THE RATE OF 9.0 PER-CENT PER ANNUM UNTIL PAID;

☒ PAYABLE IN FULL 180 DAYS FROM DATE ON 12-8-76; OR

☐ PAYABLE ON DEMAND; OR

☐ PAYABLE IN ______ (NUMBER) MONTHLY INSTALLMENTS OF $______ EACH,

THE FIRST PAYABLE ON OR BEFORE ______, 19___, WITH OTHERS PAYABLE ON OR BEFORE THE SAME DAY OF EACH SUCCEEDING MONTH THEREAFTER, AND THE LAST INSTALLMENT PAYABLE ON OR BEFORE ______, 19___ IN THE AMOUNT OF $______ (IF THE LAST INSTALLMENT IS MORE THAN TWICE THE AMOUNT OF OTHERS, IT IS A BALLOON PAYMENT AND WILL BE PAYABLE IN FULL ON THE DATE SHOWN); OR

☐ PAYABLE
$______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___
$______ ON OR BEFORE ______ 19___

(PAYMENT TERMS NOT CHECKED ARE DELETED) TOGETHER WITH A CHARGE OF FIVE PERCENT (5%) OF A PAYMENT OR PAYMENTS IN DEFAULT FOR TEN (10) OR MORE DAYS. FURTHER, IF SUIT IS INSTITUTED TO ENFORCE COLLECTION OF ANY UNPAID BALANCE OF THE LOAN UPON DEFAULT OF BORROWER(S), SAID BORROWER(S) AGREES TO PAY FOR LENDER'S LEGAL EXPENSES AND FIFTEEN PERCENT (15%) OF THE SUM OF THE UNPAID PRINCIPAL AND ALL INTEREST DUE THEREON AT THE TIME SUIT IS INSTITUTED AS REASONABLE ATTORNEY'S FEE OF LENDER.

EACH OF THE UNDERSIGNED, WHETHER MAKER-BORROWER(S), SURETIES, ENDORSERS, OR GUARANTORS AND ALL OTHERS WHO MAY BECOME LIABLE FOR ALL OR ANY PART OF THE OBLIGATIONS EVIDENCED HEREBY, DO JOINTLY AND/OR SEVERALLY WAIVE PRESENTMENT, DEMAND, PROTEST, NOTICE OF PROTEST AND/OR OF DISHONOR AND ALSO NOTICE OF ACCELERATION OF MATURITY ON DEFAULT OR OTHERWISE. FURTHER THEY AGREE THAT LENDER MAY, FROM TIME TO TIME, EXTEND OR RENEW THIS NOTE FOR ANY PERIOD OF TIME AND GRANT ANY RELEASES, COMPROMISES OR INDULGENCES WITH RESPECT TO THE NOTE OR ANY EXTENSION OR RENEWAL THEREOF, OR TO ANY PARTY LIABLE THEREUNDER OR HEREUNDER, ALL WITHOUT NOTICE OR CONSENT OF ANY OF THE UNDERSIGNED AND WITHOUT AFFECTING THE LIABILITY OF THE UNDERSIGNED. THE UNDERSIGNED, FURTHER, WAIVE NOTICE OF ACCEPTANCE OF THEIR GUARANTY AND EXPRESSLY AGREE TO PAY ALL AMOUNTS HEREUNDER, UPON DEMAND, WITHOUT REQUIRING ANY ACTION OR PROCEEDING AGAINST THE PRINCIPAL MAKER-BORROWER(S).

THIS NEGOTIABLE PROMISSORY NOTE IS SUBJECT TO THE ADDITIONAL PROVISIONS, TERMS, UNDERTAKINGS AND RIGHTS SET FORTH ON THE REVERSE SIDE HEREOF, THE SAME BEING INCORPORATED HEREIN BY REFERENCE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF.

WITNESS MY(OUR) HAND(S) AND SEAL(S):

THE UNDERSIGNED BORROWERS DO HEREWITH ACKNOWLEDGE RECEIPT OF THE DISCLOSURES CONTAINED HEREIN. THEY FURTHER ACKNOWLEDGE THAT THIS NOTE WITH DISCLOSURES WERE FILLED IN PRIOR TO THEIR EXECUTING THE SAME.

Herbert C. Scott (SEAL)
BORROWER

J. Russell Kirby (SEAL)
BORROWER

______ (SEAL)
BORROWER

NOT NEGOTIABLE

BORROWER(S) - NAME AND ADDRESS
Hubert C. Scott
Rt. # 3,
Kenly, N.C. 27542

TELEPHONE

ACCOUNT NUMBER 138624
NOTE NUMBER 0608760

1. LOAN PRINCIPAL	$ 1,000.00
2. CREDIT LIFE INS. PREMIUM	
3. DISABILITY INS. PREMIUM	
4. OTHER	
5. LESS: PREPAID FINANCE CHARGE	
6. AMOUNT FINANCED	$ 1,000.00
7. FINANCE CHARGE (TOTAL)	$ 45.00
(A) INTEREST $ 45.00	
(B) MINIMUM CHARGE	
(C)	
8. TOTAL OF PAYMENTS	$ 1,045.00
9. ANNUAL PERCENTAGE RATE 9.0 %	

BASIC TERMS OF LOAN CONTRACT

CREDIT LIFE AND DISABILITY INSURANCE IS NOT REQUIRED TO OBTAIN THIS LOAN. NO CHARGE IS MADE FOR CREDIT INSURANCE AND NO CREDIT INSURANCE IS PROVIDED UNLESS THE BORROWER TO BE INSURED SIGNS THE APPROPRIATE STATEMENT BELOW:

THE COST OF CREDIT LIFE AND DISABILITY INSURANCE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE AND DISABILITY INSURANCE:

X______ (INSURED BORROWER) (SEAL) (DATE)

THE COST OF CREDIT LIFE INSURANCE ALONE FOR THE TERM OF THE LOAN WILL BE

$______

I DESIRE CREDIT LIFE INSURANCE ONLY:

X______ (INSURED BORROWER) (SEAL) (DATE)

ANY UNPAID BALANCE OF THE TOTAL OF PAYMENTS MAY BE PREPAID IN FULL BY CASH, A NEW LOAN, REFINANCING OR OTHERWISE BEFORE MATURITY. PROVIDED ALL PAYMENTS ARE CURRENT AT THE TIME OF PREPAYMENT, LENDER MAY, AT ITS OPTION, MAKE A PARTIAL REFUND OF FINANCE CHARGES WHICH HAVE BEEN PREPAID AND UNEARNED, COMPUTED UNDER THE RULE OF 78'S.

WITNESS [signature]

WITNESS

WITNESS

DUPLICATE - SOUTHERN NATIONAL BANK FILE

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roger Allen
Treasurer
Kirby for Congress Committee
Post Office Box 249
Wilson, North Carolina 27893

Re: MUR 724 (78)

Dear Mr. Allen:

As you know, on October 16, 1978, the Federal Election Commission found reason to believe the Kirby for Congress Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from four individuals, and 2 U.S.C. § 434(b)(12) by failing to continually report an outstanding obligation to Cook, Spann, Ruef and Company, along with the circumstances of its extinguishment.

On November , 1978, the Commission directed that the Committee refund the excessive contributions accepted by the Committee and submit a debt settlement statement detailing the circumstances under which the aforementioned outstanding debt was extinguished.

Copies of the refund checks to Mr. Exum Scott, Mr. Hubert Scott, Mr. Carson Barnes, and Dr. James Etheridge, to be followed by copies of the cancelled checks when received, along with the debt settlement statement should be submitted to the Office of General Counsel within ten days of your receipt of this letter.

We look forward to the receipt of this information so that this matter may be resolved. If you have any questions concerning these matters, please contact Ms. Marsha Gentner at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Carson Barnes
c/o Carson B. Barnes Farms
Route 1, Box 131
Spring Hope, North Carolina 27882

Re: MUR 724 (78)

Dear Mr. Barnes:

On , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

<u>CERTIFIED MAIL</u>
<u>RETURN RECEIPT REQUESTED</u>

Mr. Exum Scott
Route #3
Kenly, North Carolina 27542

Re: MUR 724 (78)

Dear Mr. Scott:

On , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Hubert C. Scott
Route #3
Kenly, North Carolina 27542

Re: MUR 724 (78)

Dear Mr. Scott:

On , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. James E. Etheridge
911 Raleigh Road
Wilson, North Carolina 27893

Re: MUR 724 (78)

Dear Dr. Etheridge:

On , 1978, the Federal Election Commission voted to take no further action against you. However, we remind you that 2 U.S.C. § 441a(a)(1)(A) limits contributions to $1,000 per candidate per election, and that under 2 U.S.C. § 431(e) a loan constitutes a contribution within the meaning of the Federal Election Campaign Act of 1971, as amended.

If you have any further questions regarding this matter, please contact Ms. Marsha Gentner, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

William C. Oldaker
General Counsel

cc: David S. Orcutt
Lucas, Rand, Rose, Meyer,
Jones & Orcutt

CCC# 5449

KIRBY & CLARK

ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E CLARK

TELEPHONE
919/243-6141

October 30, 1978

8C 5491

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 724 (78)

Dear Mr. Oldaker:

The Cook, Ruef and Spann claim hasn't been filed recently because I don't consider they have a claim. They must have acceded to that contention because I have heard nothing from them in months.

You can be 100% assured that I will contest to the last court any effort to collect that disputed claim. I contend they would owe me money on a proper accounting, though I shall never press any such claim. I am only too willing to forget the whole thing as a nightmare.

I invite your attention to the ruling in Louchheim vs. Carson, 35 N. C. App. 299 et seq. which is enclosed.

Sincerely yours,

J. Russell Kirby (sah)

J. Russell Kirby

JRK:sab

Enclosures

'78 NOV 3 AM 10:29

FEDERAL ELECTION COMMISSION

The undisputed facts show that since 15 September 1969, the defendants collectively have expended in excess of $600,000 in grading, paving, house construction, installation of water and sewer lines; in architectural and engineering services; and in acquisition of property to serve the Area as public parks. In addition, they have entered into legal obligations for the expenditure of substantial additional sums and have undergone substantial changes in economic, legal, and planning positions. All these rights acquired and established and obligations undertaken have been in reliance on the zoning ordinance.

We are of the opinion and so hold that Judge Bailey, from the undisputed facts material to the issue, correctly allowed defendants' motions for summary judgment.

Affirmed.

Judge HEDRICK concurs.

Judge ARNOLD dissents.

Judge ARNOLD dissenting.

While the statute does not require a metes and bounds description of the proposed area it does require an adequate description which will put the property owners in the area on notice. In my opinion there is a genuine issue of fact as to whether the description before us is adequate, and thus, whether plaintiffs had constructive notice.

LOUCHHEIM, ENG & PEOPLE, INC. v. JAMES H. CARSON, JR., AND NORTH CAROLINIANS FOR CARSON, A POLITICAL COMMITTEE

No. 7710SC205

(Filed 21 February 1978)

1. Elections § 15— illegal campaign contributions—advances

The advance of money or anything of value to a political candidate by a corporation, labor union or business entity constitutes an illegal contribution under G.S. 163-278.19. G.S. 163-278.6(6),(9).

2. Elections § 15— illegal campaign contributions— purpose of statutes

The purpose of statutes regulating campaign contributions and expenditures by corporations and labor unions is to protect the populace from undue influence by corporations and labor unions, and to insure the responsiveness of elected officials to the public at large.

3. Elections § 15— political candidate— advancement of money by public relations firm for advertising— illegal contribution or expenditure

The payment of money by a corporation engaged in the business of public relations for media advertising for the campaign of a political candidate with the expectation of reimbursement by the candidate's campaign committee when sufficient funds were raised to cover these expenses constituted an advancement and thus was an illegal contribution or expenditure within the purview of G.S. 163-278.19(a).

4. Elections § 15— illegal campaign contributions— constitutionality of statute

The trial court's construction of *G.S.* 163-278.19 as prohibiting a public relations firm from paying the advertising expenses of a political candidate with the expectation of reimbursement when funds were raised by the candidate does not bar all credit transactions between businesses and political candidates, and the statute, on its face and as applied by the court, does not constitute an unconstitutional intrusion upon the public relations firm's rights to contract and carry on a lawful business activity.

5. Contracts § 6; Elections § 15— obligation to repay illegal campaign advancement— no enforcement by courts

The courts will not enforce an obligation to repay advancements made by a corporation to a political candidate in violation of G.S. 163-278.19.

APPEAL by plaintiff from *Bailey, Judge*. Judgment entered 17 December 1976 in Superior Court, WAKE County. Heard in the Court of Appeals 17 January 1978.

Civil action wherein plaintiff seeks to recover $22,251.65 for debts allegedly owed by the defendant, James H. Carson, Jr., for services rendered during the defendant's unsuccessful campaign for election to the office of Attorney General of North Carolina. The allegations in plaintiff's complaint are summarized and quoted as follows:

Plaintiff is a corporation engaged in the business of public relations. In July 1974 it transacted business in Raleigh, North Carolina, as Capital Communications of North Carolina, Inc. During the same period of time the defendant held the office of Attorney General of North Carolina and was preparing to campaign in the impending election as the Republican candidate for the same office. On 1 July 1974 the defendant and his campaign staff conferred with officers of the plaintiff and agreed that plaintiff would manage the media campaign for defendant. The defendant and his staff authorized the plaintiff to do whatever was necessary to handle this portion of the campaign. The plaintiff further alleged:

> 7. That the defendant, acting for himself and through his campaign managers, workers, employees, and agents, assured the plaintiff at all times that it would be paid fully for its services rendered and for monies advanced to purchase media advertising, posters, buttons, and other campaign devices for defendant's campaign.
>
> 8. That relying upon the promises and assurances of the defendant, the plaintiff commencing in July, 1974, and continuing through October, 1974, rendered full services to the defendant in procuring, arranging, directing and generally managing all aspects of media advertising of defendant's campaign for Attorney General; that the plaintiff, in the defendant's behalf, and in reliance upon the assurance of payment, advanced money for the purchase of media advertising for defendant's campaign; that from time to time, the defendant paid or caused to be paid through his campaign committee portions of the amounts outstanding for such services and for money advanced to purchase media advertising.

The defendant was at all times aware of the expenditure being made in his behalf and as of 30 October 1974 "the defendant owed to the plaintiff for actual money advanced the sum of Nineteen Thousand Three Hundred Forty-nine and 26/100ths Dollars ($19,349.26)," plus $2,902.39 in commissions. On 28 October 1974 the defendant's campaign committee sent a check payable to plaintiff in the amount of $10,000, but the check was returned for lack of sufficient funds.

In his answer the defendant denied the material allegations of the complaint and set up several defenses, among which appears the following:

> 2. That the Complaint alleges that said corporation advanced funds in the approximate amount of $20,000.00 for the political campaign, in an effort to elect the defendant to the office of Attorney General of North Carolina.

3. That North Carolina General Statute § 163-728.6(9) [sic] defines the word "expenditure" to include any advance, loan or transfer of funds.

4. That North Carolina General Statute § 163-278.19 prohibits a corporation from making any expenditure in aid of or on behalf of or in opposition to any candidate or political committee.

. . .

6. That public policy of the State of North Carolina prohibits condoning unlawful activities by Capital Communications, Inc., and its president, Jerome Louchheim and requires that the action be dismissed.

Defendant also filed a counterclaim in which he alleged that plaintiff, through its president Jerome Louchheim, knowingly and wilfully violated the law in "arrang[ing] an unlawful extension of credit to the campaign efforts of the defendant," and in doing so, damaged defendant's reputation in the amount of $50,000. Subsequent to filing his answer and counterclaim, the defendant moved pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure for judgment on the pleadings.

In a reply to the defendant's counterclaim the plaintiff alleged that it "did not make a contribution or expenditure as the term is used in G.S. 163-278.19, but paid for the cost of some advertising pending the receipt by the committee of campaign funds."

The trial court in consideration of defendant's motion for judgment on the pleadings concluded that the advance of money by plaintiff for media advertising for defendant's campaign was an expenditure by a corporation for a candidate for political office as prohibited by G.S. 163-278.19(a); and that the statute, so construed, is not violative of the North Carolina and United States Constitutions. Accordingly, judgment was entered for defendant on the plaintiff's claims, from which plaintiff appealed. The judgment was not dispositive of defendant's counterclaim.

Akins, Harrell, Mann & Pike, by Bernard A. Harrell, for plaintiff appellant.

Tharrington, Smith & Hargrove, by Wade M. Smith, for defendant appellee.

HEDRICK, Judge.

[1] In his first two assignments of error the plaintiff contends that the trial court erred in concluding on the basis of the pleadings that the plaintiff made a campaign contribution or expenditure in violation of the General Statutes of North Carolina. The statutes codified under Article 22A which regulate contributions and expenditures in political campaigns are of recent origin and have never been interpreted by the courts of this State. *See* G.S. 163-278.6 – 163-278.35 (1976), G.S. 163-278.36 (Supp. 1977). General Statute 163-278.19 reads in pertinent part as follows:

> *Violations by corporations, business entities, labor unions, professional associations and insurance companies.'* — (a) Except as provided in G.S. 163-278.19(b), it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:
>
> (1) To make any contribution or expenditure . . . in aid or in behalf of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever; . . . .

The term "contribution" as used in this statute is defined as "any *advance*, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever." G.S. 163-278.6(6) (emphasis added). The term "expenditure" is similarly defined as "any purchase, *advance*, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever." G.S. 163-278.6(9) (emphasis added). Thus, the advance of money or anything of value to a political candidate by a corporation, labor union or business entity constitutes an illegal contribution or expenditure within the meaning of this statute. The question presented in this case is whether the payments of money made by the plaintiff for media advertising in conjunction with defendant's campaign constitute "advances" as prohibited by the foregoing statutes.

In the pleadings as summarized and quoted above plaintiff described its own acts in the allegations that "plaintiff, in the defendant's behalf, and in reliance upon the assurance of payment, advanced money for the purchase of media advertising for defendant's campaign"; and "[t]hat the plaintiff corporate . . . paid for the cost of some advertising pending the receipt by the committee of campaign funds." Plaintiff in its brief recognizes that the inartful wording of its pleadings would seem to bring its conduct within the statutory prohibition but argues that the "overall sense" of the pleadings is to the contrary.

In ascertaining the meaning of the words in a particular statute the courts should keep one eye to the common definition of the word and one eye to the purposes of the statute and the evil to be remedied. *Montague Brothers v. Shepherd Co.*, 231 N.C. 551, 58 S.E. 2d 118 (1950). According to common usage, to "advance" money means "to furnish money for a specific purpose understood between the parties, the money or sum equivalent to be returned; furnishing money or goods for others in expectation of reimbursement." Blacks Law Dictionary 72 (rev. 4th ed. 1968).

[2] The purpose of the federal statute regulating campaign contributions and expenditures by corporations and labor unions, 2 U.S.C. § 441(b) (1976) (formerly 18 U.S.C. § 610), which is similar in its language and scope to our own statute, is to protect the populace from undue influence by corporations and labor unions, and to insure the responsiveness of elected officials to the public at large. *United States v. C.I.O.*, 335 U.S. 106, 92 L.Ed. 1849, 68 S.Ct. 1349 (1948); Annot., 24 A.L.R. Fed. 162 (1975). As we read G.S. 163-278.19, we perceive its purposes to be identical to those of its federal counterpart. Our Legislature, as well as Congress, has specified that the advance of money by a corporation in behalf of a political candidate is frustrative of these purposes.

[3] Thus, with the definition of "advance" and the presumed intent of our Legislature in the enactment of the campaign contribution regulations in mind, we conclude that the payments made by plaintiff constituted illegal expenditures within the meaning of G.S. 163-278.19(a). In its reply plaintiff alleged that it expended substantial sums of money for the purchase of media advertising for the defendant's campaign until the defendant's committee could raise sufficient funds to cover these expenses. It is precisely this type of activity which could encourage favored treatment by an official once he is elected. We think the Legislature intended to curb such acts in its enactment of G.S. 163-278.19 and its inclusion of "advance" within the definitions of contribution and expenditure.

Plaintiff argues that the statute, so construed, would prohibit all credit transactions between corporations and candidates for public office. Such an expansive interpretation of the statute is not justified by our conclusion in this case. We do not think that the plaintiff's expenditures in the present case were typical of the ordinary extension of credit to a client for services rendered. In this regard, we find particularly illuminating the plaintiff's allegation "[t]hat at all times, the defendant knew that media advertising had to be currently paid and was aware of the laws and regulations concerning media expenses." Implicit in this contention is the knowledge on the part of the plaintiff of the illegality of its payments; from such knowledge it is reasonable to infer that plaintiff was aware that in paying the defendant's expenses, it was going beyond the mere extension of credit.

Plaintiff also challenges the trial court's conclusion that "[t]he statute makes no distinction between the advertent and inadvertent advancement or expenditure of funds." This conclusion was apparently addressed to the plaintiff's claim in connection with the check which was submitted by the defendant and returned for lack of sufficient funds. The plaintiff's assessment of the trial court's ruling on this point appears in its brief as follows:

> What the trial court is really saying here is that if the candidate pays a firm for its services by check, and the check turns out bad, the obligation is then converted into an "inadvertent contribution" and thus falls within the prohibition of the statute.

We are in no position to determine the accuracy of the plaintiff's statement as to the trial judge's purpose in including the foregoing conclusion. However, we regard the worthless check as nothing more than an acknowledgment by the defendant that the plaintiff had advanced money in his behalf. Our analysis has focused on the acts of the plaintiff in advancing money for the purchase of media advertising for the defendant from July to October, 1974. The fact that the defendant recognized a "moral" obligation to the plaintiff on 28 October 1974 and attempted to satisfy it in part with a worthless check does not alter the complexion of plaintiff's prior illegal acts. And if the obligation itself is unenforceable then a check representative of such obligation cannot be made the basis of a claim. *Corbett v. Clute*, 137 N.C. 546, 50 S.E. 216 (1905).

[4] Plaintiff next contends that the statute, G.S. 163-278.19, is unconstitutional as construed by the trial court. Plaintiff argues that the trial court's construction of the statute would permit an unconstitutional infringement upon its rights to contract and carry on a lawful business activity which are embodied in the due process clause of the United States Constitution, U.S. CONST. amend. XIV, amend. V; and the law of the land clause of the North Carolina Constitution, N.C. CONST. art. I, § 19.

Freedom to contract and engage in a lawful business activity are rights guaranteed by the state and federal constitutions. *Muncie v. Insurance Co.*, 253 N.C. 74, 116 S.E. 2d 474 (1960); *Alford v. Insurance Co.*, 248 N.C. 224, 103 S.E. 2d 8 (1958). However, these rights are not absolute, and limitations thereon imposed by the Legislature are not violative of the constitutional provisions so long as they are reasonable in light of the purposes to be accomplished. *Morris v. Holshouser*, 220 N.C. 293, 17 S.E. 2d 115 (1941). Plaintiff argues that the statute in issue, as construed by the trial court, is arbitrary in its contravention of constitutional rights.

As previously stated, in order to prevent undue corporate and union influence on federal elections, Congress deemed it necessary to prohibit contributions and expenditures in behalf of political candidates from these sources. The federal courts have examined the encroachment on constitutional rights inherent in specific applications of the statute. The prohibition of direct contributions of money or advances of money by a corporation has been found reasonably related to a permissible State objective. *United States v. Chestnut*, 394 F. Supp. 581 (S.D. N.Y. 1975), *aff'd*, 533 F. 2d 40 (2d Cir. 1976). On the other hand, where the statute was construed to prohibit a national bank from making a fully secured loan to a political candidate, it was found to violate the fifth amendment by intruding into the normal course of business of the bank without sufficient relationship to the objective of the statute. *United States v. First National Bank of Cincinnati*, 329 F. Supp. 1251 (S.D. Ohio 1971).

Plaintiff's constitutional claims were premised on the assumption that the trial court's construction of G.S. 163-278.19 would bar all credit transactions between businesses and political candidates. Such a construction would raise constitutional questions of a different magnitude than those presented by our more limited construction and might well involve an unreasonable intrusion on constitutional rights. In any event, the plaintiff's payment of the defendant's advertising expenses were clearly advances as prohibited by the statute; and the prohibition thereof constitutes only a minimal intrusion on plaintiff's constitutional rights, and is clearly reasonable in light of the purposes to be accomplished by the statute. We hold that the statute on its face, and as applied by the trial court, is constitutional.

[5] The plaintiff in this case has sought to enforce an obligation arising out of a transaction which we have found to be in violation of G.S. 163-278.19. If this Court were to lend its aid and compel the defendant to repay money advanced contrary to the statute, the policy declared by the Legislature in the enactment of that statute would be frustrated. Thus we will follow the advice offered by our Supreme Court at an earlier time: "[W]hen the court discovers that it is invoked to aid in enforcing an illegal transaction, the court *ex mero motu* will withdraw its hand." *Cansler v. Penland*, 125 N.C. 578, 581, 34 S.E. 683, 684 (1899). *See also McArver v. Gerukos*, 265 N.C. 413, 144 S.E. 2d 277 (1965). The plaintiff's acts, as reflected in the pleadings, preclude its recovery in the courts of this State for money advanced in the amount of $19,349.26.

However, what we have heretofore said relates only to the plaintiff's claim for $19,349.26. We are unable to determine on the basis of these pleadings whether plaintiff's claim for $2,902.39 based on "commissions" is barred as an illegal contribution or expenditure to a political candidate pursuant to G.S. 163-278.19. The pleadings do not establish whether the "commissions" were earned by the plaintiff in connection with the illegal advancement of $19,349.26. Since the pleadings do not reflect an insurmountable bar to plaintiff's claim of $2,902.39, this portion of the judgment for defendant must be reversed. Furthermore, the judgment for defendant from which the appeal was taken makes no disposition of defendant's counterclaim.

The result is: that portion of the judgment dismissing plaintiff's claim against the defendant for $19,349.26 is affirmed; that portion of the judgment dismissing plaintiff's claim for commissions of $2,902.39 is reversed and remanded to Superior Court for further proceedings with respect to plaintiff's claim for $2,902.39 and defendant's counterclaim.

Affirmed in part.

Reversed and remanded in part.

Judges BRITT and WEBB concur.

JAMES E. GREENWAY AND WIFE, ALICE F. GREENWAY v. NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY AND WILLIAM A. PLEASANT

No. 7717SC135

(Filed 21 February 1978)

1. **Insurance § 113— limiting provision — no restriction of standard policy allowed**

An insurer may insure only such properties as are situated outside the limits set out in a limiting provision, which provision is descriptive, not restrictive of the standard coverage, and what an insurer may not do is promise general coverage, receive appropriate premium payment and then restrict coverage by a restrictively limiting provision.

2. **Insurance § 122— fire insurance — limiting endorsement — installation of telephone — reasonableness of endorsement**

In an action to recover the balance allegedly due under a fire insurance policy where defendant paid plaintiffs only 75% of the agreed value of their house which had been destroyed by fire because plaintiffs had not installed a telephone as required for 100% coverage by an "Unprotected Dwelling Endorsement A," which was attached to plaintiffs' policy, the endorsement provision was reasonable because tied to an increased risk and was in nowise restrictive of anything in the standard policy in violation of G.S. 58-177(3) but was descriptive of the coverage contemplated in and charged for by the standard policy.

3. **Insurance § 128— fire insurance — limiting endorsement — no waiver by insurer**

In an action to recover the balance allegedly due under a fire insurance policy which contained "Unprotected Dwelling Endorsement A," providing for reduction of coverage by 25% if there were not a telephone upon the premises, plaintiffs' argument that the endorsement provision was waived because defendant insurer, via defendant agent, knew the dwelling was under construction and without a telephone but still insured it and accepted premium payments is without merit, since the dwelling was completed well before the fire and the provision, which clearly contemplated the completed dwelling, was not waived.

4. **Insurance § 3— failure to sign endorsement — endorsement valid**

The fact that an endorsement in a fire insurance policy which limited coverage to 75% of the value of the dwelling if there were no telephone on the

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

ROCKY MOUNT, NC
PM
31 OCT
1978

'78 NOV 2 AM 11 29

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

GCC# 5341

RECEIVED
FEDERAL ELECTION
COMMISSION

LUCAS, RAND, ROSE, MEYER, JONES & ORCUTT
ATTORNEYS AT LAW
FIRST UNION NATIONAL BANK BUILDING
P. O. DRAWER 2008
WILSON, NORTH CAROLINA 27893

Z. HARDY ROSE
LOUIS B. MEYER
WILLIAM R. RAND
BOBBY F. JONES
DAVID S. ORCUTT
R. MICHAEL JONES

WILLIAM A. LUCAS (1881-1967)
OLIVER G. RAND (1895-1967)

TELEPHONE 291-3848
AREA CODE 919

'78 OCT 28 PM 1:41

October 25, 1978

807416

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 724 (78)
Dr. James E. Etheridge
911 Raleigh Road
Wilson, North Carolina 27893

Dear Mr. Oldaker:

Dr. James E. Etheridge has requested that I respond in his behalf to the inquiries in your letter of October 19, 1978.

Dr. Etheridge admits that on April 13, 1976, he made a $100.00 donation to the J. Russell Kirby for Congress campaign. That donation is evidenced by the enclosed copy of a check dated April 13, 1976, and copy of a letter and receipt dated April 16, 1976, acknowledging said contribution.

On June 10, 1976, Dr. Etheridge co-signed a note with James Russell Kirby for $1,000.00 at Southern National Bank here in Wilson, North Carolina. Dr. Etheridge was an endorsor or guarantor of said note and Mr. Kirby, the candidate, was the maker of said note. In September of 1976, the note was past due and Southern National Bank called on Dr. Etheridge to make payment in full of said note plus all then accrued and unpaid interest. In order to protect his credit rating, Dr. Etheridge paid Southern National Bank in full for the balance due on said note. The payments are evidenced by copies of two checks enclosed showing payment of principal and payment of the interest due on the note. Dr. Etheridge denies that the loan was subsequently converted to a contribution. At no time has he indicated that he has forgiven the debt which is owed to him as a result of the note which he had to pay upon the candidate's failure to pay. He has taken no action which would deny him his legal rights to proceed to collect the amount due to him as a result of having to pay said note.

LUCAS, RAND, ROSE, MEYER, JONES & ORCUTT

Mr. William C. Oldaker
Page 2
October 25, 1978

In addition, I would point out that all three of the payments made by Dr. Etheridge were made on a joint bank account of Dr. Etheridge and his wife. In light of these circumstances, it would appear that even if the total $1,124.50 was treated as a contribution it should be divided equally between Dr. Etheridge and his wife and neither individual would have contributed in excess of the statutory allowable amount.

If it is necessary in order to avoid the appearance of a violation of the applicable law, Dr. Etheridge will immediately pursue his legal remedies to collect the amount due to him as a result of the bank having call upon him to pay the note in the amount of $1,000.00.

I would appreciate your considering the contents of this letter and corresponding with me further before taking any action against Dr. Etheridge under the applicable statute.

Very truly yours,

LUCAS, RAND, ~~ROSE~~, MEYER, JONES & ORCUTT

By [signature]
David S. Orcutt

DSO:me

Enclosures

cc: Mr. J. Russell Kirby

KIRBY ★★ for Congress

GOLD PROFESSIONAL BUILDING
GOLDSBORO STREET
P.O. BOX 7101
WILSON, NORTH CAROLINA 27893
919/237-1776

April 16, 1976

Dr. & Mrs. James E. Etheridge
911 Raleigh Road
Wilson, NC 27893

Dear Earl & Minnie:

I would like to express my gratitude for your donation to our campaign. I am deeply moved by the personal interest that has been shown to us by the citizens of the Second Congressional District.

Our organization is becoming stronger with each day which gives us strength in our conviction that the people of the Second District would like new leadership in Washington.

Earl & Minnie, I and the members of the staff welcome all help and any ideas that you may have to support this campaign. The headquarters is located on the third floor of the Gold Building in Wilson and our telephone number is 237-1776. Please visit us at the headquarters or call us whenever possible.

It is your friendship and support of this campaign which will insure the leadership needed now for all the citizens of the Second District and our great country.

Sincerely,

J. Russell Kirby

JRK/sfj

1259

DR. JAMES E. ETHERIDGE
DEE ETHERIDGE
911 RALEIGH ROAD
WILSON, NC 27893

April 13 76

66-1060
531

PAY TO THE ORDER OF Robert Kirby ... $100

One Hundred ... DOLLARS

FIRST-CITIZENS BANK & TRUST CO.
WILSON, N.C. 27893

FOR Contribution Kirby for Congress

Dr. James E. Etheridge

⑆0531⑉1060⑆ ⑈366 8301238⑈ ⑈0000010000⑈

No. 108 Date April 16, 1976

RECEIVED OF Dr & Mrs James E. Etheridge

One hundred $\frac{no}{00}$ DOLLARS

FOR Contribution

AMOUNT OF ACCOUNT $

AMOUNT PAID . . . $

BALANCE DUE . . . $

Kirby for Congress Com.

By

704

DR. JAMES E. ETHERIDGE
DEE ETHERIDGE
911 RALEIGH ROAD
WILSON, NC 27893

Sept 10 76

66-1060
531

PAY TO THE ORDER OF Southern National Bank $1,000

One thousand ... $\frac{00}{00}$ DOLLARS

FIRST-CITIZENS BANK & TRUST CO.
WILSON, N.C. 27893

FOR Payment loan Robert ...

Dr. James E. Etheridge

⑆0531⑉1060⑆ ⑈366 8301238⑈ ⑈0000100000⑈

708

DR. JAMES E. ETHERIDGE
DEE ETHERIDGE
911 RALEIGH ROAD
WILSON, NC 27893

Sept. 14 1976

66-1060
531

PAY TO THE ORDER OF Southern National Bank $24 $\frac{50}{}$

Twenty-four and $\frac{50}{100}$ DOLLARS

FIRST-CITIZENS BANK & TRUST CO.
WILSON, N.C. 27893

FOR Interest

Dr. James E. Etheridge

⑆0531⑉1060⑆ ⑈366 8301238⑈ ⑈0000002450⑈

LUCAS, RAND, ROSE, MEYER, JONES & ORCUTT
ATTORNEYS AT LAW
FIRST UNION NATIONAL BANK BUILDING
P. O. DRAWER 2008
WILSON, NORTH CAROLINA 27893

RECEIVED
FEDERAL ELECTION COMMISSION

'78 OCT 20 PM 1:41

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D. C. 20463

CERTIFIED
No. 644854
MAIL

9040

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

I'm not capable of expressing to you and your Committee my thoughts as to the stupidity, the waste of time, money etc by writing about such matters. Typically of gov't waste. As Mr Kirby lost the election, how could I have any influence on any decision concerning gifts of people parties, etc. It seems to me this letter to me could only come from someone already in political power and wants to harass someone else. Or maybe at the request of someone already in political power.

By the same method you found that I went on a note for Mr. Kirby for $1000.00, you could have found, if you wanted too, that I did not pay off the note. It was assumed by Mr Kirby himself.

If you have nothing else to do than this, please close up shop and get a job with some tax paying industry and not let your conscience bother you when you get paid — or have you become like so many other gov't workers?

GCC # 5331

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

RECEIVED FEDERAL ELECTION COMMISSION

'78 OCT 27 PM 1:18

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

807356

Mr. Hubert C. Scott
Route #3
Kenly, N.C. 27542

Re: MUR 724(78)

Dear Mr. Scott:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $50 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

7904012362

H. C. SCOTT
route three
Kenly, North Carolina 27542

FEDERAL ELECTION COMM

'78 OCT 27 PM 1 48

Federal Election Commission
1325 K Street N. W.
Washington, D.C. 20463

CCC# 5347

CARSON B. BARNES FARMS
RT. 1, BOX 131
SPRING HOPE, N. C. 27882

RECEIVED FEDERAL ELECTION COMMISSION
'78 OCT 27 PM 2:17

MUR 724

October 24, 1978

807388

Federal Election Commission
1325 K Street N. W.
Washington, D.C. 20463

Attn: Ms. Marsha Gentner

Re: Letter of 10/19/78
Carson B. Barnes
Carson B. Barnes Farms

Dear Ms. Gentner,

In reference to your letter dated October 19, 1978 as to contributions to the Kirby for Congress Committee, the total contribution made to this Committee was for Carson Barnes and wife, Maxine Barnes. If this is not recorded by aforesaid parties, it should have been, and I feel I have no further obligation to said Committee, either moral or legal.

I hope this clears this matter, and if I may be of further assistance, please advise.

Sincerely,

Carson B. Barnes Farms

Carson B. Barnes

Carson B. Barnes

CBB/sb

7 9 0 4 0 1 2 3 6 5 4

Carson B. Barnes Farms
Rt. 1, Box 131
Spring Hope, N. C. 27882

SPRING HOPE NC
OCT 25
PM
1978
27882

USA 13c LIBERTY TREE

78 OCT 27 PM 2:17

Ms. Marsha Gentner
Federal Election Commission
1325 K. Street N. W.
Washington, D.C. 20463

gcc 5415
Gentner

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 248
WILSON, NORTH CAROLINA 27893

J. RUSSELL KIRBY
JOHN E. CLARK

TELEPHONE
919/243-6141

78 OCT 31 P 1: 58

October 26, 1978

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

807521

Re: MUR 724 (78)

Dear Mr. Oldaker:

This is to acknowledge receipt of your copies of certified, return receipt requested letters dated October 19, 1978, directed to Hubert C. Scott, James Russell Kirby, Exxum Scott (should be Exum Scott) and Dr. James E. Etheridge.

I have copies of the letter written on behalf of Dr. Etheridge and his wife, and concur in the facts as set out in the letter.

This letter is in regards to Exum Scott and Hubert Scott.

It is a fact both of these gentlemen signed a note with me at Southern National Bank in Wilson, North Carolina during my campaign for Congress. At a subsequent date, I took over the notes completely and a renewal note was executed to the bank without the signatures of the two Scotts. The two Scotts have no notes at any bank on which I am a co-maker nor are they obligated in any way whatsoever to pay any note for me, and they didn't pay the original note. I have assumed all obligation myself and it is still an outstanding obligation, though, hopefully, it can be paid by me in the next few days.

It is incomprehensible to me that there even be any question about the facts. I certainly invite your checking with the bank, or anyone else. If you get the straight facts you will find them as above stated.

Trusting this is the end of this matter, I am

Sincerely yours,

J. Russell Kirby

J. Russell Kirby

Contents of this letter
concurred in

Exum Scott

Hubert Scott

KIRBY & CLARK
ATTORNEYS AT LAW
206 N. TARBORO STREET
P. O. BOX 249
WILSON, NORTH CAROLINA 27893

Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roger Allen
Treasurer
Kirby for Congress Committee
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Mr. Allen:

The Federal Election Commission has found reason to believe that the Kirby for Congress Committee has violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe the Committee accepted contributions from four individual contributors in excess of the $1000 per election limitation set forth in 2 U.S.C. § 441a(a)(1)(A) and that the Committee failed to submit reports while an obligation was still outstanding to Cook, Ruef, Spann & Co., in violation of 2 U.S.C. § 434 (b)(12).

Under the Act you have an opportunity to demonstrate why no action should be taken against the Committee. 2 U.S.C. § 437g(a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

MG 724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered .... ¢
- ☑ Show to whom, date, and address of delivery ..... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Roger Allen, Treas.
Kirby for Congress Comm.

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943690	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Sharon Bryant

DATE OF DELIVERY
OCT 23 1978

POSTMARK
OCT 23 1978

5. ADDRESS (Complete only if requested)
MO.
Windsor

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO: 1977-0-249-595

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Russell Kirby
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Mr. Kirby:

The Federal Election Commission has found reason to believe that you have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. §434(b)(12) by failing to report the continuing obligation of the Kirby for Congress Committee to Cook, Ruef, Spann & Co.

Under the Act you have an opportunity to demonstrate why no action should be taken against the Committee. 2 U.S.C. § 437g(a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore you response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON,D.C. 20463

October 19, 1978

CERRTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Carson Barnes
Route #1, c/o Carson B. Barnes Farms
Spring Hope, N.C.

Re: MUR 724(78)

Dear Mr. Barnes:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $104 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain conficential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

MG 724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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- ☐ Show to whom and date delivered .... ¢
- ☑ Show to whom, date, and address of delivery .... ¢
- ☐ RESTRICTED DELIVERY Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery. $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Mr. Carson Barnes

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943686	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. CBBarnes

DATE OF DELIVERY
10-23-76

POSTMARK
OCT 23 1976

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

GPO 1977-0-249 595

79040123673

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Hubert C. Scott
Route #3
Kenly, N.C. 27542

Re: MUR 724(78)

Dear Mr. Scott:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $50 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to represent by counsel, please have such counsel so notify us in writing.

7 9 0 4 0 1 2 3 5 7 4

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

cc: James Russell Kirby

MG 724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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- ☒ Show to whom, date, and address of delivery ...... ¢
- ☐ RESTRICTED DELIVERY
Show to whom and date delivered .... ¢
- ☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery . $____
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Hubert C Scott

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	543687	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent

4. Mrs Hubert Scott

DATE OF DELIVERY
10-21-78

POSTMARK
KENLY, N.C. OCT 23 1978 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO: 1977-0-249-595

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Exxum Scott
Route #3
Kenly, N.C. 27542

Re: MUR 724(78)

Dear Mr. Scott:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $100 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

MG 724 ...

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
   - ☐ Show to whom and date delivered ..... ¢
   - ☑ Show to whom, date, and address of delivery ..... ¢
   - ☐ RESTRICTED DELIVERY Show to whom and date delivered ..... ¢
   - ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $____ (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Exxum Scott

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943688	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Mrs. Exum Scott

4. DATE OF DELIVERY — POSTMARK OCT 24 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: — CLERK'S INITIALS

☆GPO 1977-0-249-595

MG 724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
   - ☐ Show to whom and date delivered ..... ¢
   - ☑ Show to whom, date, and address of delivery ..... ¢
   - ☐ RESTRICTED DELIVERY Show to whom and date delivered ..... ¢
   - ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery $____ (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: James R. Kirby

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943685	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Sharon Bryant

4. DATE OF DELIVERY OCT 23 1978 — POSTMARK USPO OCT 23 1978

5. ADDRESS (Complete only if requested) M.O. Windsor

6. UNABLE TO DELIVER BECAUSE: — CLERK'S INITIALS

☆GPO 1977-0-249-595

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

October 19, 1978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. James E. Etheridge
911 Raleigh
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Dr. Etheridge:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $100 to the Kirby for Congerss Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 10, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain conficential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker

William C. Oldaker
General Counsel

cc: James Russell Kirby

MG 724

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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   - ☐ Show to whom and date delivered .... ¢
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   - ☐ RESTRICTED DELIVERY Show to whom and date delivered .... ¢
   - ☐ RESTRICTED DELIVERY Show to whom, date, and address of delivery . $____

   (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Dr. James E. Etheridge

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943689	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. Mrs. James E. Etheridge

DATE OF DELIVERY 10-21-78

POSTMARK: WILSON, N.C. OCT 21 1978

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆GPO: 1977-0-249-595

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 724
Kirby for Congress Committee)
James Russell Kirby)
Hubert C. Scott)
Exxum Scott)
James E. Etheridge)
Carson Barnes)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on October 16, 1978, the Commission determined by a vote of 6-0 to adopt the following recommendations, as set forth in the First General Counsel's Report dated October 12, 1978, regarding the above-captioned matter:

1. Find reason to believe Hubert C. Scott, Exxum Scott, James E, Etheridge, and Carson Barnes apparently violated 2 U.S.C. §441a(a)(1)(A by making contributions to the Kirby for Congress Committee in excess of the $1000 per election limitation for contributions from individuals.

2. Find reason to believe the Kirby for Congress Committee apparently violated 2 U.S.C. §441a(f) by accepting excessive contributions from four individual contributors.

3. Find reason to believe the Kirby for Congress Committee and James Russell Kirby apparently violated 2 U.S.C.§434(b)(12) by

MUR 724
First General Counsel's Report
Dated: October 12, 1978
CERTIFICATION

not continuing to report the amount and nature of an outstanding campaign related debt, nor the circumstances of its extinguishment.

4. Send the letters attached to the above-named report.

Attest

10/16/78 Marjorie W. Emmons

Date

Marjorie W. Emmons
Secretary to the Commission

Received in the Office of Commission Secretary: 10-12-78, 12:40
Circulated on 48 hour vote basis: 10-12-78, 4:00

October 12, 1978

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 724

Please have the attached First General Counsel's Report on MUR 724 distributed to the Commission on a 48 hour tally basis.

Thank you.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

78 OCT 12 P12: 40

DATE AND TIME OF TRANSMITTAL
BY OGC TO COMMISSION OCT 12 1978

MUR NO. 724
STAFF MEMBER(S) Gentner

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENT'S NAME: Kirby for Congress Congress Committee; James Russell Kirby; Hubert C. Scott; Exxum Scott; James E. Etheridge; Carson Barnes

RELEVANT STATUTE: 2 U.S.C. § 441a(a)(1)(A); 2 U.S.C. § 441a(f); 2 U.S.C. § 434(b)(12)

INTERNAL REPORTS CHECKED: Audit Findings

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

This MUR results from findings make by the auditors in the random audit of the Kirby for Congress Committee.

SUMMARY OF ALLEGATIONS

That Hubert C. Scott, Exxum Scott, James E. Etheridge, Carson Barnes violated 2 U.S.C. § 441a(a)(1)(A) by making contributions in excess of $1000 to the Kirby for Congress Committee.

That the Kirby for Congress Committee violated 2 U.S.C. § 441a (f) by accepting excessive contributions; and that the Kirby for Congress Committee and James Russell Kirby violated 2 U.S.C. § 434 (b)(12) by not continuing to report the amount, nature, and subsequent extinguishment of a campaign related debt.

PRELIMINARY LEGAL ANALYSIS

During the course of the audit of the Kirby for Congress Committee ("the Committee"), the auditors noted that in June and July of 1976 respondents Hubert C. Scott, Exxum Scott, James E. Etheridge and Carson Barnes each made a loan to the Committee of $1000. The sources of these loans were individual promissory notes taken out at a local bank. These notes were also signed by the candidate, James Russell Kirby (with no designation that he was signing the notes in a representative capacity). The respondents each "reloaned" the $1000 they had received to the Committee. These loans were converted to contributions to the Committee and as such were never repaid by the Committee. The above mentioned respondents each made additional contributions to the Committee, as follows.

Contributor	Date	Contribution
Hubert C. Scott	3/26/76	$50($100 in the name of Mr. and Mrs. Hubert C. Scott)
Exxum Scott	2/2/76	$100
James E. Etheridge	4/13/76	$100
Carson Barnes	5/28/76	$104

The above additional contributions, when taken with the previous $1000 contribution from each respondent, place Hubert C. Scott, Exxum Scott, James E. Etheridge, and Carson Barnes in apparent violation of 2 U.S.C. §441a(a)(1)(A) for having exceeded permissable limits for individual contributions, and the Committee in apparent violation of 2 U.S.C. §441a(f) for having accepted these excessive contributions.

The Committee filed its last report on April 5, 1978, covering its 1977 activities relevant to the 1976 primary election. Page three of the report shows an outstanding obligation to Cook, Ruef, Spann & Co. of $1999.02. To date no further reports or information on this debt, whether or who paid it, has been submitted by the Committee or the candidate, James Russell Kirby, although this was the subject of a request by the Audit Division in a letter to the Committee dated February 7, 1978. This would apparently place both the Committee and James Russell Kirby in violation of 2 U.S.C. §434(b)(12) and 11 C.F.R. §104.8 which require that the candidate and the committee continue to report the nature and amount of an outstanding campaign related debt until it is extinguished, as well as the circumstances under which the debt was liquidated.

RECOMMENDATIIONS

1. Find reason to believe Hubert C. Scott, Exxum Scott, James E. Etheridge, and Carson Barnes apparently violated 2 U.S.C. §441a(a)(1)(A) by making contributions to the Kirby for Congress Committee in excess of the $1000 per election limitation for contributions from individuals.

2. Find reason to believe the Kirby for Congress Committee apparently violated 2 U.S.C. §441a(f) by accepting excessive contributions from four individual contributors.

3. Find reason to believe the Kirby for Congress Committee and James Russell Kirby apparently violated 2 U.S.C. §434(b)(12) by not continuing to report the amount and nature of an outstanding campaign related debt, nor the circumstances of its extinguishment.

4. Send the attached letters.

Attachments:
Audit Referral
Letters of notification

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. James E. Etheridge
911 Raleigh
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Dr. Etheridge:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $100 to the Kirby for Congerss Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 10, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain conficential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Exxum Scott
Route #3
Kenly, N.C. 27542

Re: MUR 724(78)

Dear Mr. Scott:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $100 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Hubert C. Scott
Route #3
Kenly, N.C. 27542

Re: MUR 724(78)

Dear Mr. Scott:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $50 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERRTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Carson Barnes
Route #1, c/o Carson B. Barnes Farms
Spring Hope, N.C.

Re: MUR 724(78)

Dear Mr. Barnes:

This letter is to inform you that the Federal Election Commission has found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of $104 to the Kirby for Congress Committee on March 26, 1976, and by making a loan of $1000 to the Committee on June 8, 1976 which was subsequently converted to a contribution. 2 U.S.C. § 441a(a)(1)(A) prohibits contributions in excess of $1000 per election from individual contributors.

Under the Act you have an opportunity to demonstrate why no action should be taken against you. 2 U.S.C. § 437g (a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel, please have such counsel so notify us in writing.

This letter will remain conficential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

cc: James Russell Kirby

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Russell Kirby
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Mr. Kirby:

The Federal Election Commission has found reason to believe that you have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe that you have violated 2 U.S.C. §434(b)(12) by failing to report the continuing obligation of the Kirby for Congress Committee to Cook, Ruef, Spann & Co.

Under the Act you have an opportunity to demonstrate why no action should be taken against the Committee. 2 U.S.C. § 437g(a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements or explanations should be made under oath.

The Commission is under a duty to investigate this matter expeditiously. Therefore you response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON,D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Roger Allen
Treasurer
Kirby for Congress Committee
P.O. Box 249
Wilson, N.C. 27893

Re: MUR 724(78)

Dear Mr. Allen:

The Federal Election Commission has found reason to believe that the Kirby for Congress Committee has violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Commission has found reason to believe the Committee accepted contributions from four individual contributors in excess of the $1000 per election limitation set forth in 2 U.S.C. § 441a(a)(1)(A) and that the Committee failed to submit reports while an obligation was still outstanding to Cook, Ruef, Spann & Co., in violation of 2 U.S.C. § 434 (b)(12).

Under the Act you have an opportunity to demonstrate why no action should be taken against the Committee. 2 U.S.C. § 437g(a)(4). Please submit any factual or legal materials you believe are relevant to the Commission's consideration of this matter.

The Commission is under a duty to investigate this matter expeditiously. Therefore your response should be submitted within ten days after your receipt of this notification. If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

This letter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Marsha Gentner, the staff member assigned to this matter at (202) 523-4143.

Sincerely,

William C. Oldaker
General Counsel

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FEDERAL ELECTION COMMISSION

Memorandum to Bill Oldaker

from Bob Costa (AD to OGC)

(original & xerox

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

____	(1) Classified Information	____	(6) Personal privacy
____	(2) Internal rules and practices	____	(7) Investigatory files
____	(3) Exempted by other statute	____	(8) Banking Information
____	(4) Trade secrets and commercial or financial information	____	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Marsha Gentner

date 4/17/79

FEC 9-21-77

Interim Audit Report – incomplete findings + recommendations

FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 724

Date Filmed 5/9/79 Camera No. --- 2

Cameraman GPC