



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3427

DATE FILMED 7/9/92 CAMERA NO. 4

CAMERAMAN E.E.S.

92040905147

BEFORE THE
FEDERAL ELECTION COMMISSION
OF THE
91 OCT -4 AM 10:14
UNITED STATES OF AMERICA

In the Matter of:

REPRESENTATIVE PETER H. KOSTMAYER
United States House of Representatives

MR. JACK RUSS
Sergeant at Arms
United States House of Representatives

Respondents.)

MUR 3427

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 OCT -4 AM 11:15

COMPLAINT

Conservative Campaign Fund, a political action committee having its principal place of business at 1156 Fifteenth Street, N.W., Suite 500, Washington, D.C., 20005, hereby files this Complaint against Representative Peter H. Kostmayer, 2436 Rayburn House Office Building, Washington, DC, 20515; and Jack Russ, Sergeant at Arms of the United States House of Representatives, United States Capitol, Room H-124, Washington, DC 20515.

This Complaint is filed pursuant to the provisions of the United States Code and is based on information and belief that the respondents have conspired to violate and have violated the provisions of the Federal Election Campaign Act of 1971, as amended.

FACTS AND CIRCUMSTANCES

The House of Representatives maintains an entity for use by its members under the supervision and control of the Sergeant of Arms, known as the House Bank. Unlike banks outside of the House of Representatives, the House Bank does not charge fees or penalties when the owner of a checking account writes a check in excess of the funds on deposit. The House Bank provides an additional service not available to ordinary citizens. When an overdraft does occur, the Bank honors the check and charges no interest on the funds advanced to the payee.

According to a published report in the October 5, 1991 issue of Human Events (attached as Exhibit A), Peter H. Kostmayer made several overdrafts over a period of some years. The article states, "On March 13, 1984 when the account is shown to be overdrawn by \$124.40, a maximum (\$1,000) personal donation was made to the presidential campaign of Walter Mondale..."

92040905148

Complainant is unable to ascertain whether the House Bank is a corporation or is an entity within the House of Representatives. In either case, it appears that Peter H. Kostmayer and the House Bank willfully and knowingly violated the Federal Election Campaign Act, as amended. The advance of \$1,000 to the campaign of Walter Mondale when no funds were on deposit in the account of Peter H. Kostmayer appears to constitute an illegal loan by the House Bank to the Mondale campaign. Peter H. Kostmayer evidently abetted in this action by the issuance of a check when no funds were on deposit in his account.

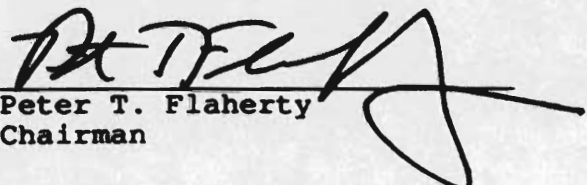
CONCLUSION

It is beyond dispute that the public needs and deserves an explanation of this highly questionable conduct. Therefore, Conservative Campaign Fund requests that the Federal Election Commission promptly investigate these activities.

An article in the Washington Post (attached as Exhibit B) reported that the Speaker of the House Thomas S. Foley "does not favor disclosure of offenders' accounts." (According to Human Events, the publication was the recipient of documents provided anonymously regarding Peter H. Kostmayer.) It is therefore further requested that the Federal Election Commission use its power of subpoena in order to insure a complete, fair and independent investigation.

CONSERVATIVE CAMPAIGN FUND

By:


Peter T. Flaherty
Chairman

Subscribed and sworn before me this 3rd day of October, 1991.


Notary Public

PAULA C. SADLER
NOTARY PUBLIC - DISTRICT OF COLUMBIA
My Commission Expires February 26, 1993



92040905149

Peter Kostmayer

In coffee shops, barbershops, gas stations and similar gathering places across the nation last week, there was fresh cynicism about Congress in the wake of the latest revelation of lawmakers' misbehavior. The new grumblings can only boost the sales of P. J. O'Rourke's current best-seller about the institution, *Parliament of Whores*.

According to a General Accounting Office report, 134 members of Congress bounced 581 personal checks for at least \$1,000 each in the first six months of this year alone. Overall, congressmen bounced 4,325 checks—an average of 10 checks per member—at the House bank, their overdraft covered by tax dollars until the member in



KOSTMAYER

question presumably makes up the difference in his or her account. There is no interest, penalty, or service charge, thanks to the taxpayer.

"Twenty-four members cavalierly borrowed through bouncing at least \$1,000 per month in a six-month period," noted the *Washington Post*. "To knowingly write a check for an amount that exceeds the actual balance without authorization is an act of fraud anywhere but in the House of Representatives.... There isn't a need for that bank. It should be closed."

Until now, neither the GAO nor the sergeant-at-arms of the House has revealed the name of a single congressional check bouncer. But *Human Events* has anonymously received substantial evidence as to the identity of at least one: arch-liberal Rep. Peter Kostmayer (D.-Pa.), whose spirited opposition to Operation Desert Storm and turbulent personal troubles have previously been delineated in this publication (see *Politics '91*, June 22).

According to the information that came to our *Politics* reporter, it would appear that in the mid-1980s Kostmayer (Lifetime American Conservative Union rating: 6 per cent) continued writing checks on his account long after it was well overdrawn, checks that were apparently covered by the House bank.

In 1983, for example, the copies of what appear to be Kostmayer's check records, show him in the red from May 10 to June 7, the deficit at one point reaching \$8,878. During that period, checks were

written for such expenses as clothing at the prestigious Paul Stuart haberdashery on New York's 5th Avenue, framing at the Capitol Hill Art and Frame Shop and the services of a maid.

From the stub entries, it appears he was solvent for one week and then the same pattern re-emerged. From June 14 through July 25 of the same year, the account copy shows payments to Brooks Brothers (\$20), a gardener (\$35), a maid (\$30) and others, all while the balance in his House bank account was between \$177.70 and \$3,792.57 in the red.

During the period of 1983-85, Kostmayer apparently also wrote bad checks to employees on his congressional and campaign staff, including Jay Heck (his chief fundraiser); Chip Brewer, former top aide; Alisa Sokolis, his district scheduler; and district staffer Susan Rikus.

Also during this time (July 19), what appears to be a loan of \$200 was made from the account to Terry L. Weldon. Sources have identified Weldon as a "rogue elephant" figure in campaigns—a former Kostmayer top aide who has also worked on the campaigns of various Republicans, including Jim Coyne, who ousted Kostmayer in the 1980 Reagan landslide, only to be turned out by him in a rematch two years later.

At different times, the overdrawing of the alleged Kostmayer House bank account appears to border on the ludicrous. On March 13, 1984, when the account is shown to be overdrawn by \$124.40, a maximum (\$1,000) personal donation was made to the presidential campaign of Walter Mondale; on March 16, 1985, a check to the Pop Florist in New Hope, Pa., for \$21.50 to pay for a Valentine gift is written when the House account is shown overdrawn by \$2,129.01; a month later, on April 18 and 20, two \$88 parking tickets are paid when the account is similarly in the red; and on June 14, interest on underpayment to the Internal Revenue Service for \$18.85 is written when the checkbook indicates the account is \$3,788.77 overdrawn.

Perhaps most dramatically of all, there is listed a check for \$23,000 written to John Kostmayer (the congressman's father) on Feb. 27, 1984, which appears to have left the account overdrawn by some \$32,800. Again, under the procedures of the House bank at the time, any overdraft was covered by the U.S. taxpayers, interest and penalty free.

Tax penalties, Valentines, parking tickets, clothes, fees for maids and gardeners, all were paid when there apparently was no money in Kostmayer's account at the House bank. Without prearrangement, no private citizen could pay bills in such a manner, or if he did, he would be subject to possible prosecution.

But as is so often the case with laws, they do not apply to those who passed them—in this case, the congressional check bouncers whose "hot checks" have been insulated by tax dollars. (In light of the new revelations, Speaker Foley last week said no overdraft would be covered by the House bank in the future.)

Upon receiving the check entries, our *Politics* reporter contacted Kostmayer's office to inquire if they were indeed his and if Kostmayer was in fact one of the check-bouncers referred to in the *Post*. To his surprise, our man reached the congressman himself, whose terse reply was, "It isn't any one's damn business!"

Perhaps, but at a time when the check-bouncing revelation has raised fresh voter cynicism about Congress and ethics questions about officials

from White House to courthouse seem to abound in the media, the voters in Pennsylvania's 9th District (Bucks County) may think it is indeed their business come 1992.

• One Capitol Hill observer wondered last week whether, as federal regulators have shut down the controversial BCCI institution, taxpayers may well rise up in fury to shut down "the U.S. House's own BCCI—Bounced Checks of Congressmen, Inc."

5-Freshman Republicans Urge Foley To Release Names of Check Bouncers

Written By Guy G. ... 9/27/91

Five House freshmen Republicans yesterday called on Speaker Thomas S. Foley (D-Wash.) to release the names and account records of House members guilty of passing \$3,331 bad checks at the House Bank.

In a letter to Foley, the freshmen said they were concerned for the House Bank's reputation.

"We respectfully submit that your actions do not go far enough,"

The letter cited a Sept. 18 General Accounting Office report describing how members bounced 8,331 checks at the bank between July 1989 and June 1990, and called on Foley to direct the House sergeant-at-arms "to make a full and complete public disclosure of the information on which the report is based."

The disclosure, the letter said, should include the listing of each insufficient fund check that was written and the name of the member who wrote each insufficient fund check.

The letter was signed by Republican Reps. Jim Nussle (Idaho), Richard John Santorum (Pa.), John A.

Boehner (Ohio), Scott King (Wash.) and Frank D. Rosten (Calif.).

The freshmen joined with fellow freshmen Reps. Charles H. Taylor (R-Mich.) and John T. Doolittle (R-Calif.) to demand the letter as a news conference just day after Foley in a rare floor speech informed members that checks would no longer be tolerated, that the bank would no longer cover bad checks and that "this is a matter that is over."

The freshmen freshmen indicated that they were concerned about several described as "rumors and rumbles" on the House floor about who had passed bad checks and for what purpose. Of more immediate concern, they said, was a growing barrage of questions from constituents.

"I was back [home last weekend] and I got pummeled on it," Boehner said. "Everybody was asking me if I've been bouncing checks."

As a result, a number groundswell of outrage has developed among members who have not passed bad checks, but who are worried, Doolittle said, about being "harred and feathered" along with the transgressors.

The GAO report described how the House Bank, a small check-writing and cashing facility run by the

sergeant-at-arms, routinely covered members' bad checks without penalty, even carrying overdrafts for several weeks. Without naming names, the report said 184 members had bounced 581 checks of \$1,000 or more between January and June 1990.

In a short news conference yesterday, Foley made clear he does not favor disclosure of offenders' accounts. He noted that since the bank operated exclusively on members' deposits and used no appropriated funds, "this matter is not a matter of loss to the public."

House Republicans have greater political freedom in criticizing the speaker's handling of the rubber-check affair, but Santorum noted that talk on the floor of the House and the sheer number of offenders indicated that "both Republicans and Democrats are involved."

Nussle said that for younger House members one of the biggest worries grew from the fact that most had run as reform candidates. "When I campaigned I used to get up and say 'They did this,'" Nussle said. "Now I have to go back and I have to say 'We did this.' ... Many of us want to sweep a paper sack with eyeholes in it."



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 9, 1991

Peter H. Kostmayer
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, D.C. 20515

RE: MUR 3427

Dear Mr. Kostmayer:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3427. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

92040905153

92040905154

If you have any questions, please contact Veronica Gillespie, the attorney assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 9, 1991

Jack Russ
Sergeant at Arms
U.S. House of Representatives
U.S. Capitol Building
Room H-124
Washington, D.C. 20515

RE: MUR 3427

Dear Mr. Russ:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3427. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

92040905155

If you have any questions, please contact Veronica Gillespie, the attorney assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

92040905156



October 21, 1991

RECEIVED
FEDERAL ELECTION COMMISSION
OCT 24 PM 3:51

Lois G. Lerner, Esq.
Associate General Counsel
Federal Election Commission
Washington, DC 20463

RE: NUR 3427

Dear Ms. Lerner:

This letter serves as my formal response to the Conservative Campaign Fund's allegation that I may have violated the Federal Election Campaign Act of 1971, as amended ("the Act").

The complaint is completely without merit and should be dismissed. The complaint alleges that I "abetted" in an illegal loan to the presidential campaign of Walter Mondale. The facts are these:

1. Human Events, a publication that has attacked me on numerous occasions, published a scurrilous and inaccurate article about my personal finances. The article was, apparently, based on my stolen check registers.

2. My April 2, 1984 bank statement (attached) shows a deposit of \$1,072.17 was made on the same day that the check in question was subtracted from my account. This left a balance of \$120.14.

3. In order to stop purely political charges from being filed with the FEC, the Commission has a common-sense rule requiring that such matters remain confidential. Yet I first learned about this FEC complaint when I read about it in the publication Roll Call and saw it listed on the electronic information newsletter Hotline. Apparently the Conservative Campaign Fund sent out a news release announcing the complaint.

4. It is my understanding that, even if the check had been drawn on insufficient funds, such a contribution would not be construed as a "loan" from the financial institution. The complaint, in other words, proposes a new, highly creative and equally dubious interpretation of what constitutes a "loan" to a campaign committee.

Kostmayer
Campaign Committee

185 Old Dublin Pike, Doylestown, PA 18901

Printed on recycled paper

92040905157

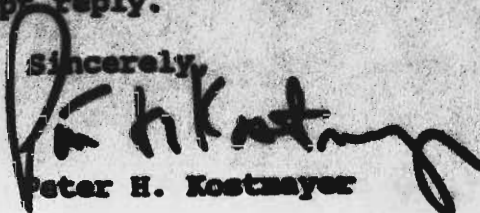
Lois G. Lerner, Esq.
October 21, 1991
page two

The facts are simple. A political opponent used slanderous and unsubstantiated allegations (based on incomplete and stolen check registers), made up a new provision to the Act, claimed that I violated such a rule, and quickly ran to the press in an effort to do political damage to my reputation. The Conservative Campaign Fund has done violence to both my reputation and to the FEC process. Its complaint should be summarily dismissed -- with an admonition to never again misuse the system in such an egregious fashion.

If the Commission desires additional information before reaching a determination in this case, I stand ready to cooperate in any way I can. Please do not hesitate to call on me.

Thank you for your time and consideration in this matter. I look forward to your prompt reply.

Sincerely,



Peter H. Kostmayer

Enclosures

92040905158

DATE
TITLE
TEXT

OCTOBER 4, 1991 - THE HOTLINE
FOCUS - HOUSE BANK: FOLLOW THE BOUNCING POLS -- BOING]]]
BOING]]]

By a vote of 390-8, the "House shuts 'rubber check' bank"
(BOSTON HERALD headline, 10/4). It was to be closed "as soon as
possible, but no later than Dec. 31" (W. POST, 10/4). ABC's Jim

SOME NOTABLE REACTIONS: BOING]]] The largest case
disclosed so far is that of Rep. Peter Kostmayer (D-PA) who
admits writing but denies bouncing a \$23K check, saying it was
covered two days later by a \$29K deposit (N.Y. TIMES, 10/4).
Kostmayer did say that he had a total of 19 overdrafts totalling
more than \$9000 (W.S. JOURNAL, 10/4). The Conservative Campaign
Fund will file a complaint with the FEC today that Kostmayer in
1984 violated the law by writing a check to the Mondale
presidential campaign that was not covered by his funds in the
House Bank at the time (release 10/3).

.....

92040905159

Donald R. Anderson
Clerk

00C 3-46
Steven R. Ross
General Counsel

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6001

October 25, 1991

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

Re: MUR 607 (3427)

Dear Mr. Noble:

I am writing with respect to your letter, dated October 9, 1991 to Jack Russ, the Sergeant at Arms of the United States House of Representatives. Your letter purports to be an official request, pursuant to the Federal Election Campaign Act of 1971, as amended, for a response to a complaint filed by the Conservative Campaign Fund. Your letter has been referred to me for response.

It is my understanding that any complaint received by the Commission is forwarded to all named respondents for preliminary comment prior to the Commission making any determination even as to such threshold matters as jurisdiction and whether or not the complaint actually alleges a violation of the Act. Clearly even a cursory review of this complaint, and of your governing law, reveals that, as to Jack Russ, no allegation of a violation within the purview of the Commission has been alleged.

Premitting the constitutional question of the Commission's jurisdictional authority to the review the official actions of an entity within the legislative branch there are several aspects in which the complaint is fatally flawed.

Although the caption of the Complaint names Jack Russ as a respondent, the "Facts and Circumstances" related in the complaint do not contain a single reference to Jack Russ. Rather they refer to "the House Bank" which is an entity maintained by the U.S. House of Representatives. By itself this failure to make even one factual or legal allegation concerning the named respondent mandates dismissal of the complaint. But there is more.

In its description of its real target, the House Bank, the complaint reveals another glaring legal insufficiency requiring immediate dismissal of the complaint. The Commission's enforcement authority, and derivatively the permissible scope of a complainant's allegations, extend only to "any person alleged in the complaint to have committed such a violation." 2 U.S.C. § 437g

02040205160

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 OCT 25 PM 2:01

(emphasis added). The House Bank, as an entity of the Federal Government is specifically excluded from the statutory definition of "person" for the purposes of the Federal Election Campaign Act. 2 U.S.C. § 431(11) states that when used in the Act "(t)he term 'person' . . . does not include the Federal Government or any authority of the Federal Government." The Complaint itself describes the Bank as a part of the Federal Government: "The House of Representatives maintains an entity . . . known as the House Bank" and "Unlike banks outside of the House of Representatives. . . ." Complaint at 1. Thus the House Bank, a part of the Federal Government, is not subject to Federal Election Commission jurisdiction.

This definitional deficiency also infects the Complaint as to the specific violation alleged. The Complaint alleges "an illegal loan by the House Bank to the Mondale campaign." Complaint at 2. Apparently the complaint would argue that the "loan" constituted an illegal contribution. Certainly there are circumstances in which a loan is treated as a contribution.¹ However, as cited above the House Bank is statutorily excluded from the definition of person utilized throughout the statute, including the definition of contribution. The Act defines a contribution, in pertinent part, as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8) (A) (i) (emphasis added).

It is unnecessary to further explore this matter, the deficiencies noted above mandate a prompt dismissal of the complaint against Jack Russ. However it should be noted that the complaint suffers from several other legal and factual flaws. These other arguments are not waived but are specifically preserved. Not raising them at this time is not intended to denigrate the conclusiveness of these other reasons why the Complaint fails to state a violation but rather to respect the threshold nature of the Commission's first responsibility -- not to entertain complaints that do not state violations of matters within the jurisdiction of the Commission.

Two final matters need be addressed. First, the Complaints unsupported and open-ended call for the Commission to conduct an investigation of the House Bank is simply further evidence of the

¹ This is not to say that the circumstances described in the complaint would constitute a "loan" from any bank to a campaign which was the payee of a check. Quite the contrary, under normal banking law principles an "overdraft" is not a loan from the bank to the payee but rather a temporary and legally collectable extension of credit from the bank to its customer. See Savan v. Riggs National Bank of Washington, D.C., 544 A.2d 267, 269 (D.C. App. 1988).

Lawrence M. Noble
October 25, 1991
Page 3

Complainant's misunderstanding or attempt to misuse the authority of the Commission. The Commission was not created to serve as a roving inquest, looking into anything that might catch the fancy of the Conservative Campaign Fund. Second, I do not address, but leave it to you, to determine whether the filing of a facially invalid complaint such as this constitutes an abuse of the Commission's enforcement process and if it does whether it is one which the Commission can address.

Sincerely,



Steven R. Ross
General Counsel to the Clerk

Counsel for Jack Russ,
Sergeant-at-Arms
U.S. House of Representatives

SRR/jcab

92040905162

RECEIVED
F.E.C.
SECRETARIAT

92 JUN -9 AM 10:05

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

HUR #3427
DATE COMPLAINT RECEIVED
BY OGC: October 4, 1991
DATE OF NOTIFICATION TO
RESPONDENTS: October 9, 1991
STAFF MEMBER Veronica M. Gillespie

COMPLAINANT: Conservative Campaign Fund

RESPONDENTS: Peter H. Kostmayer and Jack Russ, Former Sergeant-at-Arms, U.S. House of Representatives

RELEVANT STATUTES: Federal Election Campaign Act of 1971

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: General Accounting Office Report

I. GENERATION OF MATTER

This matter was initiated by a complaint filed by the Conservative Campaign Fund, a political action committee, alleging a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") by Peter H. Kostmayer, U.S. House of Representatives and the U.S. House of Representatives Bank ("House Bank").¹ Attachment A. Responses have been received from counsel for Jack Russ, the former Sergeant-at-Arms, at the U.S. House of Representatives and from Peter H. Kostmayer. Attachments B and C.

II. FACTUAL AND LEGAL ANALYSIS

The complaint filed by the Conservative Campaign Fund alleges that "[i]t appears that Peter H. Kostmayer and the House

1. The House Bank was closed on December 31, 1991.

92040905163

Bank willfully and knowingly violated the Federal Election Campaign Act, as amended." Attachment A, p. 2. The complaint, which cites to no specific statutory provision, bases its assertion on the fact that Kostmayer allegedly wrote a check for \$1000, for which he had insufficient funds in his House Bank account at the time, to the 1984 presidential campaign of Walter Mondale, and that the House Bank advanced the \$1000 to the 1984 presidential campaign. The complaint concludes that this advance "appears to constitute an illegal loan by the House Bank to the Mondale campaign." Attachment A, p. 2.

Counsel for the House Bank argues that the complaint is legally insufficient because it fails to allege a violation within the purview of the Commission's jurisdiction. Counsel contends that the House Bank is not a "person" for the purposes of 2 U.S.C. § 431(11), but rather is just another entity of the Federal Government, which is specifically excluded from the statutory definition of "person" in the Act. As a result, counsel concludes that the complaint does not state any violation of matters within the Commission's jurisdictional enforcement authority and therefore, the complaint should be dismissed.² Attachment B, p. 2.

In his response to the complaint, Kostmayer avers that the complaint has no factual merit but is purely a political attack

2. Counsel also contends that the complaint is fatally flawed because it fails to make a factual or legal allegation specifically against Jack Russ by name. Staff has clarified for counsel that Mr. Russ was named in his representative capacity for the House Bank. Counsel declined the invitation to supplement his response in light of this clarification.

92040905164

against him. Kostmayer claims that the Conservative Campaign Fund based its complaint upon an article published in Human Events, and that this publication has attacked him numerous times in the past. Kostmayer further claims that the article itself was based upon his stolen check registers and also contained inaccurate information about his personal finances. Attachment C, p. 1. Kostmayer argues that there is no factual basis to support the complaint's allegation that he violated the Act with respect to his contribution to the 1984 presidential campaign of Walter Mondale.

In particular, Kostmayer contests the very assertion that he had insufficient funds on deposit in his House Bank account when he issued the \$1000 check in question. On the contrary, Kostmayer claims that he made a deposit of \$1,072.17 on the same day that the Mondale check was deducted from his account. In support of his assertion, Kostmayer relies upon a copy of his House Bank statement, which shows an account balance of \$120.14 for the day in question. Attachment C, p. 2. In fact, the account does not appear to have had a negative balance anytime during the period covered by the bank statement (3/01/84 - 4/02/84). Furthermore, the bank statement does not appear to have been altered, changed, or modified in any respect on its face. In light of the foregoing, it does not appear that the check was drawn on insufficient funds.

Although the response of the House Bank raises interesting jurisdictional issues, this Office submits that those issues need not be resolved here on the grounds that Kostmayer has

22040905165

refuted the factual basis for the allegation made in this complaint. From the evidence presented by Kostmayer, it does not appear that an "overdraft" of funds occurred with regard to the transaction in question from Kostmayer's House Bank account.³ Accordingly, this Office recommends that the Commission find no reason to believe that Kostmayer or the House Bank violated any provisions of the Act, as amended, on the basis of the complaint in this matter and close the file.

III. RECOMMENDATIONS

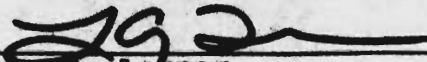
1. Find no reason to believe that Peter H. Kostmayer or the House Bank violated any provisions of the Federal Election Campaign Act, as amended, on the basis of the complaint filed in this matter.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

6/9/92

BY:


Lois G. Lerner
Associate General Counsel

Attachments

- A. Complaint
- B. Response/Jack Russ/House Bank
- C. Response/Kostmayer

3. Aside from the facts presented by this complaint, we note that the House Ethics Committee listed Peter H. Kostmayer as one of the 303 active and former members of Congress who wrote overdrafts at the House Bank during the 39-month period, from July 1, 1988 to Oct. 3, 1991. See e.g., The Washington Post, Friday, April 17, 1992, p. A14, Col. 1; The Washington Times, Friday, April 17, 1992, p. 7, Col. 5. According to these newspaper articles, Kostmayer wrote 50 overdrafts during the 39-month period. News articles detailing instances where members actually overdrew their accounts raise additional issues under the Act such as whether such payments constituted improper loans or advances of a member's salary. As those issues are not raised by the instant complaint and in light of the investigation of the House Ethics Committee and the Department of Justice's Special Counsel, we recommend the Commission defer consideration of such broader issues at this time.

92040905166



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE H. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: JUNE 12, 1992

SUBJECT: MUR 3427 - FIRST GENERAL COUNSEL'S REPORT
DATED JUNE 9, 1992

The above-captioned document was circulated to the
Commission on Tuesday, June 9, 1992 at 4:00 p.m.

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

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda
for Tuesday, June 23, 1992.

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

92040905167

92040905168

),

**Peter W. Kostmayer and Jack Russ,
Former Sergeant-at-Arms, U.S.
House of Representatives**

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 23, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3427:

1. Find no reason to believe that Peter H. Kostmayer or the House Bank violated any provisions of the Federal Election Campaign Act, as amended, on the basis of the complaint in this matter.
2. Approve the appropriate letters as recommended in the General Counsel's report dated June 9, 1991.
3. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

6-23-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 30, 1992

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Peter T. Flaherty
Chairman
Conservative Campaign Fund
1156 15th Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3427

Dear Mr. Flaherty:

On June 23, 1991, the Federal Election Commission reviewed the allegations of your complaint dated October 4, 1991, and found that on the basis of the information provided in your complaint, and information provided by Peter H. Kostmayer and the U.S. House of Representatives' Bank, there is no reason to believe they violated any provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, on June 23, 1991, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

92040905169



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 1992

CLOSED

Hon. Peter H. Kostmayer
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, D.C. 20515

RE: MUR 3427
Peter H. Kostmayer

Dear Mr. Kostmayer:

On October 9, 1991, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On June 23, 1992, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you violated any provisions of the Act. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

92040905170



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 30, 1992

**Mr. Steven R. Ross
General Counsel to the Clerk
U.S. House of Representatives
U.S. Capitol Building
Washington, D.C. 20515**

**RE: MUR 3427
House Bank**

Dear Mr. Ross:

On October 9, 1991, the Federal Election Commission notified your client, the Bank of the U.S. House of Representatives, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On June 23, 1992, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that the House Bank violated any provisions of the Act. Accordingly, the Commission closed its file in this matter as it pertains to Bank of the House of Representatives.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

92040905171



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF RUL # 3427

DATE FILMED 7/10/92 CAMERA NO. 4

CAMERA MAN E.E.S.

92040905172