



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3605

DATE FILMED 6/23/93 CAMERA NO. 4

CAMERAMAN E.E.J.

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LAW OFFICES
OF

Rodney G. Gregory, P.A.

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

SEP 9 9 08 AM '92

Rodney G. Gregory, Esquire
Lynn Ann Herron, Paralegal
C. Cruppenink, Legal Assistant
Paul M. Rigsby, Investigator

100 Riverside Avenue
Jacksonville, Florida 32202
Telephone: (904) 353-5990
Facsimile: (904) 353-7771

September 2, 1992

VIA FACSIMILE TRANSMISSION (202) 219-3923
FOLLOWED BY ORIGINAL HARD COPY TO:

Lawrence M. Noble, General Counsel
Office of the General Counsel
Federal Elections Commission
999 E. Street, N.W.
Washington, D.C. 20463

RE: COMPLAINT AGAINST ANDREW E. JOHNSON FOR CAMPAIGN VIOLATIONS

Dear Mr. Noble:

This is to advise that I serve as General Counsel for the Political Campaign of Corrine Brown, democratic candidate for United States House of Representative, from Florida's newly created 3rd Congressional District.

In Florida's Primary held September 1, 1992, Ms. Brown received approximately 43% of the votes cast, Andrew E. Johnson received approximately 31% of the votes cast, and two other candidates split the balance of the votes. A primary runoff is now set for October 1, 1992 between Ms. Brown and Mr. Johnson.

Upon information and belief, Ms. Brown has reason to believe that Mr. Johnson has failed to comply with various Federal campaign law requirements, including filing the appropriate Declaration of Candidacy report, a detailed statement showing the receipts and disbursements of funds exceeding \$5,000.00, and a campaign finance report required by Federal law to be filed by July 31, 1992 and August 12, 1992. The relevant statutes appear to be 2 U.S.C. §432(e), 434, 11 C.F.R. 100.3, 101.1, 102.1, 104.1, and 104.5.

We remain very concerned about the fact that Mr. Johnson had a call in talk-show program on a local Jacksonville, Florida radio station (WVOJ 970 AM), which started in 1990 and has continued without interruption since that time until the present.

We are unaware of the program being suspended although we have been advised that the daily program, which airs twice daily, with two (2) different editions, now referred to as a "Town Meeting", is a "paid political program", possibly under a political contract with the station. A copy of an "ad" from the election day edition of the Florida Times-Union (the only daily general circulation newspaper in Jacksonville), is enclosed for your reference.

MUR 3605

92 SEP -9 PM 3:44

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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Mr. Noble

-2-

September 2, 1992

We are unaware whether this radio program complies with F.E.C. or Federal Communication Commission requirements, but, by this letter, request that you investigate the same to check all legalities, as well as whether the same has been properly and timely reported as required by federal law.

We would greatly appreciate an immediate investigation into this formal complaint, which is based on allegations of possible or apparent campaign violations.

In the interest of time and expediency, this letter is faxed to you with a hard copy to immediately follow.

Sincerely,

LAW OFFICES OF
RODNEY G. GREGORY, P.A.

Rodney G. Gregory

RGG/cac

cc: Ms. Corrine Brown

STATE OF FLORIDA
COUNTY OF DUVAL

Sworn to and subscribed before me
this 2nd day of September, 1992.

NOTARY PUBLIC - STATE OF FLORIDA

My commission expires:

Lynn Ann Herron
Notary Public STATE OF FLORIDA
My Comm Exp 9/4/94
BONDED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 16, 1992

Rodney G. Gregory, Esquire
Law Offices of Rodney G. Gregory, P.A.
100 Riverside Avenue
Jacksonville, FL 32202

RE: MUR 3605

Dear Mr. Gregory:

This letter acknowledges receipt on September 9, 1992, of your complaint, submitted on behalf of Corrine Brown and Friends of Corrine Brown and Kenneth W. Jones, as treasurer, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Andrew E. Johnson, the Committee to elect Andy Johnson and WVOJ-AM 970 and Dick Buckner, as General Manager. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3605. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa E. Klein", is written over the typed name.

Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

September 16, 1992

Andrew E. Johnson, Treasurer and Candidate
Committee to Elect Andy Johnson
435 Clark Road # 312
Jacksonville, FL 32218

RE: MUR 3605

Dear Mr. Johnson:

The Federal Election Commission received a complaint which indicates that you and the Committee to Elect Andy Johnson ("Committee") 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 3605. 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 and the Committee 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.

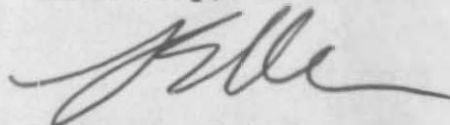
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

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Andrew E. Johnson, Treasurer and Candidate
Committee to Elect Andy Johnson
Page 2

If you have any questions, please contact Noriega E. James,
the staff member assigned to this matter, at (202) 219-3400.
For your information, we have enclosed a brief description of
the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 16, 1992

Dick Buckner, General Manager
WVOJ-AM 970
2427 University Boulevard, North
Jacksonville, FL 32211

RE: MUR 3605

Dear Mr. Buckner:

The Federal Election Commission received a complaint which indicates that WVOJ-AM 970 and you, as general manager, 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 3605. 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 WVOJ and you, as general manager 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.

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Dick Buckner, General Manager
WVOJ-AM 970
Page 2

If you have any questions, please contact noriega e. james,
the staff member assigned to this matter, at (202) 219-3400.
For your information, we have enclosed a brief description of
the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

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WVOJ 970

AM RADIO

TELEPHONE 904-743-6970 ★ POST OFFICE BOX 8392 ★ JACKSONVILLE, FLORIDA 32239

September 28, 1992

Federal Election Commission
Washington, DC 20463

ATT: Noriega E. James

Re: MUR 3605

I am Marilyn R. Buckner, General Manager of Radio Station WVOJ Jacksonville, FL.

This is in response to your letter of September 16, 1992 regarding the complaint of Rodney G. Gregory, General Council for the Political Campaign of Corrine Brown, who seeks to become the democratic candidate for United States House of Representative, from Florida's newly created 3rd Congressional District.

Although neither your letter nor Mr. Gregory's complaint specifies by what action WVOJ is possibly in violation of FEC or FCC requirements based on our telephone discussion we understand that your area of concern is whether Andrew Johnson, a competing candidate for that position, is paying for his programs on this station.

Andrew E. Johnson is not now, and has never been an employee of WVOJ. Mr. Johnson entered into a Time Purchase Contract with WVOJ for a daily (Mon-Fri) Talk Show that began June 4, 1990 and continued to the date of June 6, 1992. The time purchased was 12:05 - 2:00PM, and two hours at night time, either by tape repeat, or sometimes live at night. Known as "The Andy Johnson Show".

In early June 1992, Mr. Johnson expressed to me that he was in the process to qualify to be a candidate for the 3rd district Congressional Office. I made a review with our station's Washington Attorney, Mr. Donald E. Ward to research the FEC & FCC political requirements. I also discussed this particular situation with FCC Attorney, Mr. Milton Gross and other FCC Staff attorneys. Every effort has been made to comply with Federal Regulations. Based on their advice, we entered into a series of weekly contracts with Mr. Johnson, as described below.

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OFFICE OF GENERAL COUNSEL

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Page Two: Federal Election Commission
Washington, DC 20463
Noriega E. James

RE: MUR 3605

Since June 8, 1992 "The Andy Johnson Show" has continued as "A Paid Political Broadcast" in the same time periods as before, always with proper political disclaimer announcements to identify the broadcast as being a Paid Political Broadcast. A special Political Rate Card was calculated according to the rules, listing the lowest rates. A copy of our Political Rate Card was mailed to the Corrine Brown Political Headquarters on or about July 20, 1992.

In addition, due to the possibility that WVOJ may be requested to sell "Like Time" to other political candidates, Mr. Johnson pledged in writing that he would release any of the time he had purchased in advance, to make available for equal use to other candidates. For this reason, a new Political Contract has been entered into with Mr. Johnson each week in advance. A copy of such contract is enclosed.

Moreover, Mr. Johnson has made timely payments to WVOJ under each such contract.

If further information is needed, please advise.

Sincerely,

Marilyn R. Buckner

Marilyn R. Buckner
General Manager

Encl: Copy of Political Contract - Week of June 8th
(Same as each week to date is on file)

CC: Mr. Bruce B. Timm, V.P. WBOM, Inc.
Mr. Donald E. Ward, PA
WVOJ Political File

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POLITICAL BROADCAST AGREEMENT

STATION: WVOJ RADIO

DATE: JUNE 8, 1992

LOCATION: 2427 UNIV. BLVD. N.

JACKSONVILLE, FLA. 32211

CANDIDATE NAME ANDY JOHNSON POLITICAL PARTY Democrat

POLITICAL OFFICE SOUGHT U.S. House Representative (Primary) ELECTION ON 9-1-92

DO HEREBY REQUEST STATION TIME AS FOLLOWS:

LENGTH OF BROADCAST	HOUR	DAYS	TIMES PER WEEK	TOTAL NO. WEEKS	RATE
2 hrs. -LIVE OR	12:-2:pm	M - F	5	1	72.00 PER HR.
2 hrs. -RECORDED	7:-9:pm	M - F	5	1	27.50 PER HR.

DATE OF FIRST BROADCAST	DATE OF LAST BROADCAST
6/8/92	6/12/92

Total Charges: 995.00

Advance payment for the above time will be paid by: Andy Johnson Campaign Fund

whose address is: 4308 BAY FOREST TERRACE, JAX, FLA. Station is authorized to announce the advertisement as paid for by such person or entity. If not an individual, the entity furnishing payment is:

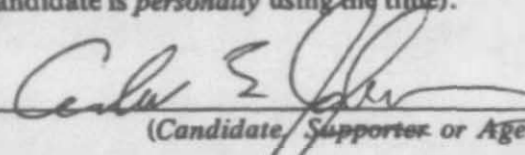
() corporation () association
() committee () other _____

Names and officers of entity are: _____

Telephone number of treasurer: () _____

It is my understanding that: If the time is to be used by the candidate himself within 45 days of a primary or primary runoff election, or within 60 days of a general election or special election, the above charges represent the *lowest unit charge* of the station for the same class and amount of time for the same period; where the use is by a person or entity other than the candidate or is by the candidate but outside the 45 or 60 day period preceeding an election, the above charges to not exceed the charges made for comparable use of such station time by other users.

It is agreed that the use of the station for the above stated purposes will be governed by the Communications Act of 1934, as amended, and the FCC's rules and regulations. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the above stated broadcasts. For the above stated broadcasts I also agree to provide the station with a script or a recording, which will be delivered to the station at least 3 days before the time of the scheduled broadcasts; (note: the two preceding sentences are not applicable if the candidate is *personally* using the time).


(Candidate, Supporter or Agent)

(Accepted)
(Rejected) BY: Marilyn Bushman Title: GENERAL MANAGER
(Station Representative)

This application, whether accepted or rejected, will be available for Public Inspection for a period of 2 years in accordance with FCC regulations Section 73.1940.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3605

NAME OF COUNSEL: DONALD E. WARD, P.C.

ADDRESS: 1201 PENNSYLVANIA AVENUE, N.W.

P. O. BOX 286

WASHINGTON, D.C. 20044-0286

TELEPHONE: 202-626-6290

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

SEPT. 28, 1992
Date

Marilyn Buckner
Signature

RESPONDENT'S NAME: MARILYN BUCKNER- GENERAL MANAGER, WVOJ RADIO

ADDRESS: P. O. BOX 8392

JACKSONVILLE, FL. 32239

HOME PHONE: 904-641-4548

BUSINESS PHONE: 904-743-6970

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RECEIVED
F.E.C.
SECRETARIAT

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

93 MAY 17 PM 4:03

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR #s 3483, 3605, 3615, 3624,
3660, 3706, 3709, 3710
STAFF MEMBER: Lawrence L. Calvert, Jr.

COMPLAINANTS:

MUR 3483: Gerald B. Wetlaufer
MUR 3605: Rodney G. Gregory, as General Counsel to
Friends of Corinne Brown
MUR 3615: Don Brewer Jr., as Chairman of the Duval
County Republican Executive Committee
MUR 3624: Walter H. Shapiro
MUR 3660: Dr. Philip W. Ogilvie
MURs 3706, 3709, and 3710: William D. White

RESPONDENTS:

MUR 3483: George Bush
Bush-Quayle '92 Primary Committee
and J. Stanley Huckaby, as treasurer
KXIC Radio
U. S. Small Business Administration

MUR 3605: Andrew E. Johnson
Committee to Elect Andy Johnson
and Andrew E. Johnson, as treasurer
WVOJ Radio

MUR 3615: Clinton/Gore '92 Committee and
Robert A. Farmer, as treasurer
WJXT-TV

MUR 3624: Bush-Quayle '92 Primary Committee
and J. Stanley Huckaby, as treasurer
Bush-Quayle '92 General Committee
and J. Stanley Huckaby, as treasurer
WBT Radio

MUR 3660: Flower & Garden Magazine

MUR 3706: Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
Arlen Specter
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer
WDUQ Radio
Kevin Gavin

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MUR 3709: Lynn Yeakel
Lynn Yeakel for U. S. Senate Committee and
Sidney Rosenblatt, as treasurer
WPXI-TV
Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota
West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop
Willoughby Communications

MUR 3710: Arlen Specter
Citizens for Arlen Specter
and Stephen J. Harmelin, as treasurer
WPXI-TV

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(B)(i)
2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)
2 U.S.C. § 441b
2 U.S.C. § 441b(a)
2 U.S.C. § 441d
2 U.S.C. § 441d(a)(1)
26 U.S.C. § 9003(d)
11 C.F.R. § 100.7(a)(1)(iii)(A)
11 C.F.R. § 100.7(b)(2)
11 C.F.R. § 100.8(b)(2)
11 C.F.R. § 114.4(e)
11 C.F.R. § 114.9(d)
47 C.F.R. § 73.1940(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

These matters arise from various complaints filed in 1992 concerning several 1992 elections. Each complaint alleges that a news story or broadcast constituted a prohibited in-kind

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contribution from a media corporation to candidates or committees in violation of 2 U.S.C. § 441b. Accordingly, the complaints are treated in one report. Details about the generation of each particular matter and the material facts of each case will be provided in the next section.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no corporation, except through a separate segregated fund, may make a contribution or expenditure in connection with any Federal election. 2 U.S.C. § 441b. However, the Act and the Commission's regulations exclude, under certain conditions, costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure". 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

In Readers' Digest Ass'n. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981), the court, interpreting the Act, stated that the media exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. The Commission has interpreted the media exemption broadly, consistent with Congress' admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H. R. Rep. No. 943, 93d Cong., 1st Sess., at 4 (1974). For instance, although Section 431(9)(B)(i) speaks only of "news

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stor[ies], commentar[ies], or editorial[s]", the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R.

§§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption. To determine whether a medium of communication fits one of these descriptions, the Commission has applied the definitions of "broadcaster," "newspaper", and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). See, e.g. MURs 2277 and 2567. Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification were explicitly drafted with the media exemption in mind. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979).

According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission [("FCC")], as well as networks." 44 Fed. Reg. at 76,735. Magazines and "other periodical publications" are "publication[s] in bound pamphlet form appearing at regular intervals (usually either weekly,

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bi-weekly, monthly or quarterly) and containing articles of news, information, opinion and entertainment, whether of general or specialized interest. Only magazines and periodicals which ordinarily derive their revenues from subscriptions and advertising" are to be exempt. 44 Fed. Reg. at 76,735.

In addition to the "legitimate press function" test, the Commission must also determine whether the press entity is owned or controlled by any political party, political committee or candidate. This test is a straightforward inquiry into whether the complaint, response or other data available to the Commission suggest that a media entity is so owned or controlled. See, e.g., MUR 3645. If it is, it qualifies for the exemption only in certain narrowly defined situations described in the regulations. See 11 C.F.R. §§ 100.7(b)(2)(i) and (ii) and 100.8(b)(2)(i) and (ii).¹

Paid advertising expressly advocating a candidate's election or defeat would not qualify for the media exemption and would be subject to the requirements of 2 U.S.C. § 441d. That section provides disclaimer requirements "whenever any person makes an

1. Under the cited provisions, if a media entity is owned or controlled by a party, committee or candidate the media exemption extends only to the costs of news stories "(i) which represent . . . bona fide news account[s] communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which [are] part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area" These provisions are not applicable to any of the MURs discussed in this report. However, it is important to note that, contrary to the assertion of complainant William D. White in MURs 3706, 3709 and 3710, the "reasonably equal coverage" requirement is triggered only by a finding that a media entity is owned or controlled by a party, committee or candidate.

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expenditure" for "general public political advertising" containing express advocacy. Obviously, Congress did not intend through the media exemption to exempt paid advertising containing express advocacy from the definition of "expenditure"; otherwise, Section 441d would be a nullity. By contrast, paid non-political advertising sponsorship of a broadcast or publication protected by the exemption is permitted, provided that the sponsor exercises no control over the exempt content. See Advisory Opinion 1987-8 (corporate sponsorship of magazine and television interview series with presidential candidates was not prohibited).

B. The Cases

1. MUR 3483

This matter was generated by a complaint received from Gerald B. Wetlaufer of Iowa City, Iowa against KXIC Radio of Iowa City; then-President George Bush; the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer; and the U. S. Small Business Administration (SBA). The complaint alleges that taped radio public service announcements produced by SBA and broadcast by KXIC contained the statement "President Bush knows our challenges", leading into a voice-over message from the President promoting SBA export assistance programs. The complaint appears to allege that because President Bush was a candidate for re-election at the time the public service announcement was broadcast, the announcement expressly advocated his candidacy and was a thing of value to his campaign. Consequently, the complaint theorizes that the production and airing of the public service announcement constituted a prohibited in-kind contribution from

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the SBA and KXIC to the Bush campaign. Attachment A-1.

As a threshold matter, this Office is of the opinion that the Commission lacks jurisdiction over the SBA in this case. Although 2 U.S.C. § 441a(a)(1) provides that "no person" shall make contributions in excess of certain limits, 2 U.S.C. § 431(11) provides that "the term 'Person' . . . does not include the Federal Government or any authority of the Federal Government." The SBA is, of course, a federal agency. Moreover, for reasons that will be shown, even if the SBA were subject to the Commission's jurisdiction this Office would still recommend that the Commission find no reason to believe the SBA violated any provision of the Act.

KXIC asserts it broadcast the announcement "to meet its responsibilities as a licensee of the Federal Communications Commission to present programming that addresses issues of concern to the community," and argues that the broadcast of public service announcements like the one at issue here is per se within the legitimate press function of a radio station. Attachment A-3 at 2.

In Advisory Opinion 1978-76, the requester, a member of Congress, had produced a film on the services his office made available to constituents. A television station in the member's home district proposed to broadcast the film free of charge as a public service announcement. The Commission determined that the media exemption was "available when, in the exercise of its responsibility [as an FCC licensee] to serve the public interest, convenience and necessity, the station carries a . . . public

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service announcement to inform constituents of facilities and services provided" by the member's office.

The SBA announcement appears to meet the test articulated in AO 1978-76. KXIC asserts it broadcast the announcement in furtherance of its obligation as an FCC licensee, and, by providing a toll-free telephone number listeners could call to order SBA publications, the announcement informed listeners of services provided by the Federal government.² Attachment A-3 at 5. Additionally, KXIC's general manager, Steven Winkey, declared that KXIC's parent, Iowa City Broadcasting Co., is neither owned nor controlled by a party, committee or candidate. Id. at 4. Because the announcement appears to be within the press exemption, it does not appear to contribute a contribution to the Bush-Quayle '92 Primary Committee.

Therefore, this Office recommends that the Commission find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee and J. Stanley Huckaby, as treasurer, violated any provision of the Act with respect to MUR 3483 and close the file.

2. MUR 3605

This matter was generated by a complaint received from

2. Cf. former 47 C.F.R. § 73.1810(d)(4), the FCC's former definition of a "public service announcement", which provided that announcements for which the broadcaster made no charge and which promoted the activities and services of Federal agencies, among other entities, qualified as public service announcements. Although the FCC has removed the regulation from the Code of Federal Regulations, see 49 Fed. Reg. 33,658 (August 24, 1984), it has continued to refer to the definition. See In the Matter of Policies and Rules Concerning Children's Television Programming, 5 FCC Rcd. 7199, 7204-05 n. 10 (1990).

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Rodney G. Gregory, as general counsel to Friends of Corinne Brown, against Andrew E. Johnson, the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, and WVOJ Radio of Jacksonville, Florida.³ The complaint alleged that Johnson continued to host a call-in radio program on WVOJ after becoming a candidate for Congress, and that this arrangement may have constituted a prohibited in-kind contribution from WVOJ to the Johnson campaign. Attachment B-1. WVOJ's response indicates that both before and after becoming a candidate for Congress, Johnson paid WVOJ for two hours of live broadcast time every weekday afternoon and a two hour replay at night. See Attachment B-2 at 1. The station asserts that after Johnson became a Congressional candidate, the time was paid for by his campaign committee. Id. at 3. The committee's disclosure reports appear to corroborate the assertion.

As discussed supra at 5-6, paid political advertising falls outside the scope of the news media exemption. Furthermore, because it appears that WVOJ charged Johnson the usual and normal charge for air time consistent with 11 C.F.R.

§ 100.7(a)(1)(iii)(A), this Office recommends the Commission find no reason to believe that WVOJ violated 2 U.S.C. § 441b, and close

3. Friends of Corinne Brown was the principal campaign committee of Corinne Brown, who, like Johnson, was a candidate for the Democratic nomination for U. S. Representative from the Third Congressional District of Florida. In the September 1, 1992 Florida Democratic primary, Brown and Johnson received 43 percent and 31 percent of the vote, respectively, qualifying them for the October 1, 1992, run-off election. In the run-off, Brown was nominated, receiving 64 percent of the vote to Johnson's 36 percent. Brown was elected to the U. S. House of Representatives in the November 3, 1992 general election.

the file with respect to WVOJ.⁴

However, WVOJ's response raises the question of whether Johnson's call-in show carried a legally sufficient disclaimer. The response indicates that after Johnson became a candidate, the show was identified as a "Paid Political Broadcast." Attachment B-2 at 2. 2 U.S.C. § 441d(a)(1) provides that political advertising, "if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee." A disclaimer identifying Johnson's show as a "Paid Political Broadcast" without identifying who paid for it would not meet Section 441d(a)(1)'s requirements. Accordingly, this Office recommends that the Commission find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

4. 11 C.F.R. § 100.7(a)(1)(iii)(A) provides that the provision of services to a political committee at less than the usual and normal charge for such services will constitute an in-kind contribution to the committee. Both the contract between WVOJ and Johnson and the FCC's regulations governing the sale of broadcast time to candidates provide that if air time is used by candidates personally within 45 days of a primary or run-off election, the station may charge the "lowest unit charge of the station for the same class and amount of time for the same period;" prior to 45 days before an election, the station may charge not more than "the charges made for comparable use of such station time by other users." Attachment B-2 at 3; 47 C.F.R. § 73.1940(b) (reprinted at 11 C.F.R. Supp. A., p. 265 (1992 ed.)). Moreover, the rates on the contract appear generally consistent with the advertising rates quoted for WVOJ in the Gale Directory of Publications and Broadcast Media 1993, taking into consideration the time of broadcast and the station's wattage. Therefore, it appears that WVOJ charged Johnson the "usual and normal" charge for air time.

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3. MUR 3615

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This matter was generated by a complaint received from Don Brewer, Jr., chairman of the Duval County (Florida) Republican Executive Committee, against WJXT-TV in Jacksonville, Florida and the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer. The complaint alleges that WJXT broadcast a live call-in interview program featuring Democratic presidential nominee Bill Clinton on September 9, 1992.⁵ According to the complaint, WJXT invited the public and placed television sets on its premises outside its studio building so that members of the public could watch the program. It then allegedly allowed the Clinton campaign to erect a tent over the television sets and exclude persons who were not Clinton supporters from the tent. The Clinton committee purportedly "enclosed the area with police tape and police officers to prevent non-Clinton supporters from viewing the program. Approximately two hundred and fifty Clinton supporters were allowed into [the] viewing area while approximately seventy non-Clinton supporters were held away from the event by police lines." Attachment C-1. Moreover, the complaint alleges that "WJXT . . . allowed Clinton financial supporters into the station to meet privately with Governor Clinton." Id. The cumulative effect of these events, the complaint alleges, was a prohibited corporate in-kind contribution from WJXT to the Clinton campaign.

Both responses dispute the complaint's version of the facts.

5. The broadcast was apparently carried statewide over the "Florida News Network," which consists of WJXT and several other television stations.

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While Clinton apparently did appear on WJXT's September 9 broadcast, both responses indicate that the television sets were brought onto WJXT's property by the Clinton campaign, not WJXT. Attachment C-2 at 3; Attachment C-3 at 3. However, WJXT management apparently did not object to the sets' presence; management had already decided to permit the general public to gather on its property while Clinton was inside the studio building, attachment C-2 at 2, and it appears that this decision may have come in response to a request from the Clinton committee. Attachment C-3 at 5. Station management explicitly gave the Clinton campaign permission to put up the tent, but not until the tent was partially erected. Attachment C-2 at 3. Neither response directly disputes the complaint's contention that persons opposed to Clinton's candidacy were excluded from the tent. However, WJXT asserts that crowd control at the site was handled by local police (including some off-duty officers with whom it contracted to direct traffic in its parking lot) and the U. S. Secret Service, and that any actions by those agencies or by Clinton supporters to exclude Clinton opponents from the premises were taken without station management's knowledge or approval. Id. at 2. Finally, WJXT denies that it hosted a "private meeting" between Clinton and "financial supporters"; instead, it asserts it hosted a small reception after the program for Clinton and local

dignitaries. Id. at 3-4.⁶

The broadcast itself appears to fall within the "media exemption." A call-in interview with a major party nominee for President is a legitimate news story, and it makes no difference that the station is producing, as well as covering, the news story. Cf. MUR 2567 (debates produced by broadcasters are news stories within meaning of exemption). WJXT is an FCC licensee, and there is no indication that it is owned or controlled by a party, candidate, or committee. Moreover, there appears to be no factual basis for any implication in the complaint that the event after the broadcast was a Clinton fundraiser.

This Office does not concur with WJXT or the Clinton-Gore Committee's contention that any costs incurred by WJXT with regard to the tent, including the opportunity costs of allowing the Clinton Committee to use WJXT property to install TV sets and a tent were "costs incurred in covering or carrying" Clinton's appearance on the broadcast and therefore exempt pursuant to 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Contrary to WJXT's assertions, the station's ability to carry the broadcast was in no way altered by its decision to allow demonstrators on station property. In fact, granting permission to the Clinton Committee to set up TV sets and to erect a tent to shelter the TVs and Clinton supporters is entirely unrelated to the station's

6. WJXT does acknowledge that some Clinton supporters entered the station building and "were restricted to a roped off area" in the lobby, although the station claims WJXT personnel did not let them into the building. The station also acknowledges that Mr. Clinton shook hands with these supporters as he walked through the lobby on his way out. See C-2 at 12-13.

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broadcast function and should not be viewed as a "cost incurred in covering or carrying a new story."

Under the Act, corporations are prohibited from making any contribution or expenditure in connection with the election of a Federal candidate, and candidates and political committees are prohibited from knowingly accepting any such contributions or expenditures. 2 U.S.C. § 441b(a). For purposes of Section 441b, "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan advance, deposit or gift or money, or any services, or anything of value to any candidate, campaign committee, or political committee or organization in connection with a federal election." 2 U.S.C. § 441b(b)(2). In this case, the use of WJXT's property by the Clinton campaign clearly constitutes an in-kind contribution prohibited under Section 441b.⁷

WJXT advances two arguments for concluding that, even without the protection of the news media exemption, it made no contribution or expenditure in this case. First, the station argues that none of its actions were taken for the purpose of influencing a federal election as would be required by 2 U.S.C. § 431(8) under Orloski v. FEC, 795 F.2d 156 (D.C. Cir. 1986). That case involved an address at a picnic by an incumbent officeholder in his capacity as a Member of Congress; here Clinton

7. While the Corporations Division of the Office of the Secretary of State of Florida lists no corporation under the name "WJXT," the Gales Directory of Publications and Broadcast Media 1992 lists WJXT as owned by Post-Newsweek Stations, Inc. of Washington, D.C.

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spoke to Florida voters not in his capacity as Governor of Arkansas but in his capacity as a Presidential candidate.⁸ The station also argues that its actions do not constitute expenditures on the grounds that they lack "express advocacy." WJXT attempts to rely on the Supreme Court's holding "that an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of Section 441b. FEC v. Massachusetts Citizens for Life, 479 U.S. 246, 249 (1986). Respondent's argument carries no weight here since this case does not involve independent expenditures but rather in-kind contributions for which the "express advocacy" limitation does not apply.

Accordingly, it appears that WJXT made, and the Clinton campaign knowingly received, a prohibited contribution. Therefore, this Office recommends that the Commission find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a) and that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

4. MUR 3624

This matter was generated by a complaint received from Walter H. Shapiro of Charlotte, North Carolina, against WBT Radio of Charlotte, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees. The complaint alleges that by

8. WJXT actually invited both major party candidates to appear for Town Meeting programs. The Bush campaign initially declined the offer and then subsequently agreed to participate in a program broadcast on October 23, 1992. See Attachment C-2 at 2.

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broadcasting the nationally syndicated Rush Limbaugh radio program, WBT effectively broadcast three hours a day of unpaid advertising for the Bush-Quayle campaign and thereby made a prohibited in-kind contribution. Attachment D-1. On November 30, 1992, Shapiro amended his complaint, alleging that Limbaugh was in a business relationship with Roger Ailes, a consultant to former President Bush's 1988 campaign, and that Bush and then-Vice President Quayle appeared on the Limbaugh program while other candidates for President and Vice President did not. Attachment D-2.

WBT is licensed by the FCC, and is owned not by any party, candidate or committee but by Jefferson-Pilot Communications Co., a North Carolina media corporation. In a sworn affidavit in response to the complaint, Richard Jackson Whitt, WBT's general manager, stated that the Limbaugh program is a nationally syndicated "call-in" talk show broadcast for three hours every weekday. On the typical show, Limbaugh "states his opinion on some subject and then invites callers, who may express opposing or supporting views. . . . Politics may or may not be discussed on any given day." Attachment D-4 at 5-6. Limbaugh's program therefore appears to be commentary by a third party not employed by WBT; such third-party commentary is squarely within the "legitimate press function" of a broadcaster. Advisory Opinion 1982-44. WBT's broadcast of the Rush Limbaugh program thus appears to be protected by the media exemption, and there appears to have been no prohibited in-kind corporate contribution for

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either Bush-Quayle committee to accept.⁹ Accordingly, this Office recommends that the Commission find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, and J. Stanley Huckaby, as treasurer of both committees violated any provision of the Act with respect to MUR 3624, and close the file.

5. MUR 3660

This matter was generated by a complaint received from Dr. Philip W. Ogilvie of Washington, D. C. against Flower & Garden magazine. The complaint alleges that Flower & Garden's use of Barbara Bush's picture on the cover of its November 1992 issue was an illegal in-kind contribution to the presidential campaign of Mrs. Bush's husband. Attachment E-1.

As the response of KC Publishing, Inc., the parent of Flower & Garden, points out, Barbara Bush was a public figure whose interest in gardening was newsworthy for a general-interest publication devoted to that topic; the cover picture accompanied an interview with Mrs. Bush printed inside the magazine. Attachment E-2. Moreover, Flower & Garden would appear to be a "bona fide" magazine. From a xerographic copy of the magazine's cover, it would appear that Flower & Garden is in bound pamphlet form. It is published every other month, and apparently has a

9. Shapiro's amendment to the complaint, which must be read broadly even to find an allegation of conduct that would violate the Act, may be an attempt to allege that through a web of unsubstantiated relationships between the committees, Ailes, and Limbaugh, the costs associated with the program constituted in-kind contributions. No factual support is offered for such an allegation.

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regular subscription price of \$12.95 per year, a subscription and newsstand circulation of more than 570,000, and regular advertising rates. 1 Gale Directory of Publications & Broadcast Media 1993 1165. Further, it appears to contain articles of interest to the general gardening public. Therefore, Flower & Garden's interview with Barbara Bush appears to have been within its legitimate press function.

KC Publishing's response does not explicitly address the issue of ownership or control, but no available data suggest that KC Publishing is a party, committee or candidate. FEC indices reveal no campaign activity by KC Publishing or publisher John C. Prebich in the 1992 election cycle. Accordingly this Office recommends that the Commission find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b, and close the file on MUR 3660.

6. MURs 3706, 3709, and 3710

These matters were all generated by complaints filed by William D. White of Pittsburgh, Pennsylvania.¹⁰ In MUR 3706, White filed a complaint against Lynn Yeakel; the Lynn Yeakel for U.S. Senate Committee and Sidney Rosenblatt, as treasurer; Senator Arlen Specter; Citizens for Arlen Specter and Stephen J. Harmelin,

10. White claims to have been an independent candidate for United States Senator from Pennsylvania in the November 3, 1992 general election. See, e.g., Attachment F-1 at 2. However, White failed to file a Statement of Candidacy with the Commission for the 1992 election, and counsel for one of the respondents in these matters stated upon information and belief that White failed to qualify for the Pennsylvania ballot. Attachment F-2 at 2.

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as treasurer;¹¹ WDUQ Radio of Pittsburgh; and Kevin Gavin, WDUQ's news director. The complaint alleges that WDUQ provided free air time to the Yeakel campaign, and that this constituted an illegal in-kind contribution. It also implies that Gavin, who is WDUQ's news director, personally contributed services to the Yeakel campaign by interviewing Yeakel during the broadcast produced with WDUQ's grant of free air time. Additionally, White alleges that WDUQ's coverage of Yeakel and Specter's participation in the League of Women Voters' "Citizens' Jury" program constituted an illegal in-kind contribution from WDUQ to both campaigns.

Attachment F-1.

WDUQ's general manager, Judy Jankowski, averred in a sworn affidavit that the station made "free and essentially unrestricted time" available to all candidates for the U. S. Senate from Pennsylvania, including White. Attachment F-4 at 2. WDUQ's donation of air time was similar to that approved by the Commission in Advisory Opinion 1982-44, and to the donation of free newspaper space held to be within the media exemption in MUR 486 (cited in AO 1982-44). WDUQ's coverage of the League of Women Voters' "Citizens' Jury" appears to have been spot news coverage. Moreover, WDUQ is an FCC licensee; therefore, the broadcasts at issue appear to have been within WDUQ's legitimate press function. Additionally, WDUQ appears to be owned not by a party, committee or candidate, but by Duquesne University.

11. Senator Specter was the Republican nominee for U. S. Senator from Pennsylvania in the 1992 general election, and Yeakel was the Democratic nominee. Senator Specter was re-elected, receiving 51 percent of the vote to Yeakel's 49 percent.

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Attachment F-4 at 1. Accordingly, this Office recommends that the Commission find no reason to believe that WDUQ Radio or Kevin Gavin violated any provision of the Act with respect to MUR 3706. Because there appears to have been no prohibited contribution to accept, this Office further recommends that the Commission find no reason to believe that Lynn Yeakel, the Yeakel for Senate Committee or Sidney Rosenblatt, as treasurer, Senator Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer violated any provision of the Act with respect to MUR 3706 and close the file.

In MUR 3709, White filed a complaint against Yeakel, the Yeakel committee, and WPXI-TV of Pittsburgh. The complaint alleged that WPXI's hour-long broadcast of a "call-in" interview featuring Yeakel constituted an illegal in-kind contribution from WPXI to the Yeakel campaign. Attachment G-1. On December 2, 1992, White amended his complaint to name each of the program's advertisers as respondents, and, on January 8, 1993, White again amended his complaint to name as a respondent Willoughby Communications, an advertising agency that acted as purchasing agent for one of the advertisers.¹² The amendments alleged that

12. The advertiser respondents in MUR 3709 are:

Lawrence Convention Center
Monro Muffler/Brake
Welch Foods, Inc.
Richardson-Vicks, Inc.
MAACO
Quality Furniture Co.
Edgar Snyder and Associates
Red Lobster Restaurants
International Paper Co.
Turnpike Toyota

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the advertisers' sponsorship of the program constituted illegal in-kind contributions to the Yeakel campaign. Attachments G-2 and G-3.

WPXI responds that the program about which White complains was a "regularly scheduled news program." Attachment G-4 at 1. Confirming this assertion, all of the advertiser respondents contend that they bought time on WPXI news programming generally, and had no knowledge (much less intent) that they were buying time on a broadcast featuring Yeakel. For instance, respondent Monro Muffler/Brake asserted that "one spot was ordered to run every other week from July 11 through October 3, 1992 in the WPXI Saturday morning 'news block' between 8 a.m. and 12 p.m." Attachment G-6. The specific placement of advertisements within that time period was apparently left up to WPXI.

Regularly scheduled news programs are protected by the media exemption. Moreover, WPXI is an FCC licensee and does not appear to be owned or controlled by a party, committee or candidate. Accordingly, it appears to be within the media exemption, and this Office recommends that the Commission find no reason to believe that WPXI-TV violated any provision of the Act with respect to MUR 3709.

As discussed supra at 6, non-political advertising on or sponsorship of material which qualifies for the media exemption is

(Footnote 12 continued from previous page)

West Penn Power Co.
Cinema World, Inc.
Medic Alert
General Mills, Inc.
Willi's Ski Shop

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not prohibited by 2 U.S.C. § 441b, provided that the advertiser exercises no editorial control over the content of the exempt material. Because none of the advertiser respondents appeared to exercise editorial control over the content of WPXI's interview with Yeakel, this Office recommends that the Commission find no reason to believe that any of the advertiser respondents or Willoughby Communications violated any provision of the Act. Finally, because there appears to have been no prohibited in-kind contribution, this Office recommends that the Commission find no reason to believe that Lynn Yeakel or the Lynn Yeakel for Senate Committee, or Sidney Rosenblatt, as treasurer, violated any provision of the Act with respect to MUR 3709 and close the file.

In MUR 3710, White filed a complaint against Senator Specter, the Specter committee, and WPXI. The allegations were substantially the same as those involving Yeakel, the Yeakel committee, and WPXI in MUR 3709. Attachment H-1. However, unlike in MUR 3709, White did not name individual advertisers on the program as respondents. The allegations and responses in MUR 3710 are sufficiently similar to those in MUR 3709 for the same analysis to apply. Accordingly, this Office recommends that the Commission find no reason to believe that any respondents violated any provision of the Act with respect to MUR 3710 and close the file.

III. RECOMMENDATIONS

A. With respect to MUR 3483:

1. Find no reason to believe that KXIC Radio, the U. S. Small Business Administration, George Bush, or the Bush-Quayle '92 Primary Committee or J. Stanley Huckaby, as treasurer, violated any provision of the Act.

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2. Approve the appropriate letters.

3. Close the file.

B. With respect to MUR 3605:

1. Find no reason to believe that WVOJ Radio violated 2 U.S.C. § 441b, and close the file with respect to WVOJ radio.

2. Find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1).

3. Approve the attached Factual and Legal Analysis.

4. Approve the appropriate letters.

C. With respect to MUR 3615:

1. Find reason to believe that WJXT-TV violated 2 U.S.C. § 441b(a).

2. Find reason to believe that the Clinton-Gore '92 Committee and Robert A. Farmer, as treasurer, knowingly violated 2 U.S.C. § 441b(a) and violated 26 U.S.C. § 9003.

3. Approve the attached Factual and Legal Analyses.

4. Approve the appropriate letters.

D. With respect to MUR 3624:

1. Find no reason to believe that WBT Radio, the Bush-Quayle '92 Primary Committee, the Bush-Quayle '92 General Committee, or J. Stanley Huckaby as treasurer of both committees, violated any provision of the Act.

2. Approve the appropriate letters.

3. Close the file.

E. With respect to MUR 3660:

1. Find no reason to believe that KC Publishing, Inc., violated 2 U.S.C. § 441b.

2. Approve the appropriate letters.

3. Close the file.

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F. With respect to MUR 3706:

1. Find no reason to believe that WDUQ Radio, Kevin Gavin, Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, Arlen Specter, or Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

G. With respect to MUR 3709:

1. Find no reason to believe that Lynn Yeakel, the Lynn Yeakel for U. S. Senate Committee or Sidney Rosenblatt, as treasurer, WPXI-TV, Lawrence Convention Center, Monro Muffler/Brake, Welch Foods, Inc., Richardson-Vicks, Inc., MAACO, Quality Furniture Co., Edgar Snyder and Associates, Red Lobster Restaurants, International Paper Co., Turnpike Toyota, West Penn Power Co., Cinema World, Inc., Medic Alert, General Mills, Inc., Willi's Ski Shop, or Willoughby Communications violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

H. With respect to MUR 3710:

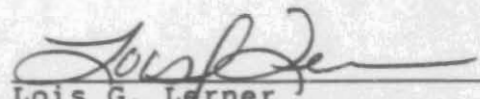
1. Find no reason to believe that Arlen Specter, Citizens for Arlen Specter or Stephen J. Harmelin, as treasurer, or WPXI-TV violated any provision of the Act.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

5/17/93

BY:


Lois G. Lerner
Associate General Counsel

93040950089

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3605
Andrew E. Johnson;)
Committee to Elect Andy Johnson and)
Andrew E. Johnson, as treasurer;)
WVOJ Radio)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 25, 1993, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 3605:

1. Find no reason to believe that WVOJ Radio violated 2 U.S.C. § 441b, and close the file with respect to WVOJ radio.
2. Find reason to believe that the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer, violated 2 U.S.C. § 441d(a)(1), but take no further action and close the file with respect to these respondents.
3. Approve the Factual and Legal Analysis as recommended in the General Counsel's report dated May 17, 1993.

(continued)

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4. Direct the Office of General Counsel to send appropriate letters pursuant to the above actions, and include admonishment language in the letter to the Committee to Elect Andy Johnson and Andrew E. Johnson, as treasurer.

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter dissented; Commissioner McDonald was not present.

Attest:

5-26-93
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 10, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rodney G. Gregory, Esquire
Law Offices of Rodney G. Gregory, P.A.
100 Riverside Avenue
Jacksonville, FL 32202

RE: MUR 3605

Dear Mr. Gregory:

This is in reference to the complaint you filed with the Federal Election Commission on behalf of Corrine Brown and Friends of Corrine Brown and Kenneth W. Jones, as treasurer, dated September 2, 1992, concerning possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Andrew E. Johnson, the Committee to Elect Andy Johnson and WVOJ-AM 970 and Dick Buckner, as General Manager.

Based on that complaint, on May 25, 1993, the Commission found that there was reason to believe that Andrew E. Johnson and the Committee to Elect Andy Johnson violated 2 U.S.C. § 441d(a)(1). However, after considering the circumstances of this matter, the Commission determined to take no further action against Andrew E. Johnson and the Committee to Elect Andy Johnson. On the same date the Commission also found that there is no reason to believe WVOJ-AM violated any provision of the Act with respect to MUR 3605. Accordingly, on May 25, 1993, the Commission closed the file in this matter.

This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Eric S. Brown
Paralegal Specialist

Enclosure
General Counsel's Report

93040950092



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 10, 1993

Andrew E. Johnson, Treasurer and Candidate
Committee to Elect Andy Johnson
435 Clark Road Suite 312
Jacksonville, FL 32218

RE: MUR 3605
Committee to Elect Andy Johnson and
Andrew E. Johnson, as treasurer

Dear Mr. Johnson:

On May 25, 1993, the Federal Election Commission found reason to believe that you and the Committee to Elect Andy Johnson ("Committee") violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that radio broadcasts require a legally sufficient disclaimer stating that the broadcasts in question were paid for by your authorized committee. It appears your broadcasts on WVOJ Radio may not have contained the disclaimer required under 2 U.S.C. § 441d(a)(1). You should take immediate steps to insure that this activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal

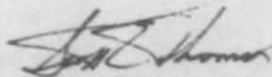
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Andrew E. Johnson, Treasurer and Candidate
Page 2

materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Eric S. Brown, the staff member assigned to this matter, at (202) 219-3400.

Sincerely,



Scott E. Thomas
Chairman

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 10, 1993

Donald E. Ward, Esquire
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044-0286

RE: MUR 3605
WVOJ-AM 970

Dear Mr. Ward:

On September 16, 1992, the Federal Election Commission notified your client, WVOJ-AM 970, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 25, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you on behalf of WVOJ-AM 970, that there is no reason to believe WVOJ-AM 970 violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "L. G. Lerner", is written over the typed name of Lois G. Lerner.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3605

DATE FILMED 6/23/93 CAMERA NO. 4
CAMERAMAN E.E.S.

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