



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4267

DATE FILMED 4-25-97 CAMERA NO. 1

CAMERAMAN JMW

97043800430



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK006992

September 28, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: DEMOCRATIC EXECUTIVE COMMITTEE OF FLORIDA - REFERRAL
MATTERS

On September 11, 1995, the Commission approved the Final Audit Report (FAR) on the Democratic Executive Committee of Florida (the Committee). The report was released to the public on September 19, 1995. The attached findings from the FAR are being referred to your Office:

- ° Use of Funds from a Non-federal Account (Finding II.A.)
- ° Expenditures in Connection with Federal Elections funded by the Non-federal Account (Finding II.C.)

The Committee has stated that procedures have been implemented to manage and disclose its shared activity in accordance with 11 CFR §106.5(g)(1) to preclude the use of funds from its non-federal account. Amendments have been filed correcting the disclosure of this shared activity.

The Committee stated that no documentation could be found as to why prior employees funded expenditures in connection with federal elections from the non-federal account and would not speculate nor assume why such expenditures were made. The Committee noted it will reimburse the non-federal account for these expenditures over the next twelve months so as not to deplete the federal account. Committee reports have been amended to disclose these disbursements and to reflect the debt to the non-federal account.

97043800431

MEMORANDUM TO LAWRENCE M. NOBLE
Page 2

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Bill Antosz or Alex Boniewicz at 219-3720.

Attachments:

- Finding II.A. - Use of Funds from a Non-federal Account
- Finding II.C. - Expenditures in Connection with Federal Elections funded by the Non-federal Account

97043800432

II. Audit Findings and Recommendations

A. Use of Funds from a Non-federal Account

Sections 102.5(a)(1)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in part, that a political committee that finances political activity in connection with both federal and non-federal elections shall either: establish a separate federal account in a depository, such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act and all disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations provides that committees that have established separate federal and non-federal accounts under 11 CFR 102.5 shall pay the expenses of joint federal and non-federal activities as follows: (i) pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (ii) establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities.

Sections 434(b)(5)(A) and (C) of Title 2 of the United States Code state, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a committee operating expense, together with the date, amount and purpose of such operating expenditure. Further, each report shall disclose the name and address of each affiliated committee

97043800433

to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers.

Although 11 CFR §106.5(g)(1) requires joint expenditures to be paid from a federal account, the Audit staff determined that, except for payroll expenditures, the non-federal operating account generally paid for shared activity and was reimbursed by the federal account during the period January 1, 1991 through August 28, 1992.^{4/} On August 6, 1992, the Committee established a separate (federal) allocation account and implemented procedures to comply with 11 CFR §106.5. Prior to August 6, 1992, the Committee made transfers at regular intervals from its federal account to its non-federal operating account to fund the federal portion of shared expenses. The Audit staff's analysis indicates that sufficient funds were transferred to the non-federal operating account with respect to the federal share of joint expenses. Further, adequate permissible funds appear to have been deposited into the non-federal operating account to fund the federal portion of shared expenses.

The Audit staff noted that during the audit period, the Committee failed to itemize 10 transfers totaling \$171,251 disbursed from its federal account to its non-federal accounts. In addition, these transfers were not included in the Committee's reported activity (see Finding II.D.).

The Committee also maintained a separate payroll allocation account for wage, salary, and payroll tax expenses. The non-federal operating account, the non-federal house and senate victory accounts, and the federal operating account made regular transfers to the payroll account so that it could issue paychecks and pay payroll taxes. These transfers to the payroll account were not included in the Committee's reported activity (see Finding II.D.). Further, the Committee failed to report, on Schedules H-4, all disbursements from its payroll account during the period 1/1/91 through 6/30/92 which totaled \$820,269. In addition, the Audit staff identified fifteen petty cash disbursements totaling \$3,100 disbursed from its payroll account that were not itemized as required.

Committee representatives advised the Audit staff during the course of the audit that procedures have been implemented to manage and disclose its shared activity in accordance with 11 CFR Section 106.5(g)(1).

^{4/} It should be noted that during this period, the Committee's federal operating account occasionally paid for shared expenses and would subsequently be reimbursed from the appropriate non-federal account.

Finally, during 1992, the Committee failed to itemize six disbursements to vendors totaling \$25,738 disbursed from its federal allocation account.

The Audit staff discussed this matter with the Committee's representative at the exit conference and provided workpapers detailing the omissions noted above. The Committee's representative agreed to file appropriate amended disclosure reports.

The interim audit report recommended that the Committee demonstrate that it did not make disbursements from its non-federal operating account for the purpose of financing federal activity. Absent such a demonstration, the Committee could offer any other comments and/or documentation it believed relevant to this matter.

The interim audit report also recommended that the Committee file:

- ° Schedules H-4 (for Line 21a) itemizing all expenditures from its payroll account; to include the above noted petty cash expenditures;
- ° Schedules H-4 (for Line 21a) or Schedules B (for Line 21b), as appropriate itemizing the six disbursements to vendors noted above;
- ° Schedules B (for Line 21b) itemizing all transfers from the federal account to non-federal accounts; and
- ° (Memo) Schedules H-4 which detail all joint expenses disbursed from the non-federal account (to support the transfers from the federal account to be reported on Schedule B for Line 21b).

In response to the interim audit report, the Committee filed Schedules B and Schedules H-4 which materially disclosed payroll transactions, petty cash expenditures, disbursements to vendors and transfers from the federal account to the non-federal account, as recommended above.

However, the Committee did not file memo Schedules H-4 to support the transfers from the federal account. In the narrative portion of its response, the Committee states there are no Schedules H-4 since "[d]ata from 1991 was lost due to computer problems. In addition, documentation was not retained by prior employees as to why transfers were made. We do not wish to assume why these transfers were made; therefore an explanation cannot be given at this time."

97043800435

C. Expenditures in Connection with Federal Elections
Funded by the Non-Federal Account

Sections 102.5(a)(1)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in part, that a political committee that finances political activity in connection with both federal and non-federal elections shall either: establish a separate federal account in a depository, such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act and all disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections.

Section 110.7(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that the national committee of a political party may make expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party. In addition, such expenditures may be made through any designated agent, including State and subordinate party committees.

97043800436

As a result of our review of disbursements from the Committee's non-federal accounts, the Audit staff identified 17 expenditures made from the non-federal operating account in connection with federal elections totaling \$62,591.

Based on the Committee's annotated documentation, three of these expenditures, totaling \$6,791, were made relative to "Clinton/Gore" for telephone and consulting. Additionally, the documentation for two of these disbursements indicated they were "transition" related.

Of the remaining fourteen expenditures, four expenditures, totaling \$9,500 were made to each of four authorized candidate committees. Available documentation consisted of canceled checks and expense authorization forms which note "GOTV" as the purpose. However, disclosure reports filed by each of these authorized committees disclose these payments as contributions from the Florida Democratic Party.

The remaining ten expenditures included: payments to vendors for polling, postage and printed materials made on behalf of congressional candidates, payment of National Convention hotel expenses and expenditures for the use of a rental car and beepers at the National Convention by Senator Graham from Florida, an incumbent candidate for the U.S. Senate in 1992.

The Committee's representative was advised of this matter at the exit conference and was provided a schedule detailing these expenditures.

In the interim audit report, the Audit staff recommended that the Committee provide documentation demonstrating that disbursements were not made from a non-federal account in connection with federal elections. Evidence submitted was to include:

- ° documentation and/or an explanation detailing the nature and purpose of transition expenses incurred on behalf of Clinton-Gore and why they should not be considered contributions to or expenditures on behalf of a Presidential candidate;
- ° documentation which itemizes all costs relative to the National Convention hotel and associates these costs with individuals;
- ° documentation and/or an explanation of why National Convention expenses incurred on behalf of federal congressional candidate(s) should not be considered contributions to or expenditures on behalf of the candidate; and

97043800437

° any documentation and/or explanation of the nature of "GOTV" payments to federal congressional candidates, as well as payments to various vendors for goods/services on behalf of other federal congressional candidates demonstrating why these should not be considered contributions to or expenditures on behalf of the candidates.

Absent such a demonstration, the Audit staff recommended that the Committee reimburse \$62,691 to the non-federal account. The Audit staff further recommended that the Committee file appropriate (memo) Schedules B (for Line 23) to amend its disclosure reports to properly disclose these expenditures.

The Committee's response stated that no documentation could be found as to why prior employees made such transactions and would not speculate nor assume why such expenditures were made. The response also notes that the Committee will reimburse the non-federal account for these expenditures over the next twelve months so as not to deplete the federal account. Committee reports have been amended to reflect this debt to the non-federal account.

97043800438

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 4 3 10 PM '97

In the Matter of

28 U.S.C. § 2462

Statute of Limitations

SENSITIVE

MAR 11 1997

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

I. INTRODUCTION

On December 26, 1996, the United States Court of Appeals for the Ninth Circuit issued a decision in *Federal Election Commission v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996). That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

As noted in the memorandum regarding the filing of a petition for rehearing, the Office of General Counsel believes that the Commission should accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. See Memorandum to the Commission, *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams*, dated January 10, 1997. As also noted, however, we have sought further review of the court's decision

97043800439

relating to issues of equitable relief and equitable tolling.¹ *Id.* See also *FEC v. NRSC*, 877 F. Supp. 15, 21 (D.D.C. 1995).

This General Counsel's Report discusses the impact of 28 U.S.C. § 2462 on the Office of General Counsel's enforcement caseload.² This Report describes the active and inactive enforcement matters which are potentially affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462, and makes recommendations for each of the potentially affected matters. This Report addresses all cases where the statute of limitations potentially expires, or partially expires, by the end of calendar year 1997 (December 31, 1997).

The Office of General Counsel is recommending that

18 matters be closed at this time. By doing so, this Office believes that it will be able to devote more resources toward more recent activity, particularly those matters that arose from the 1996 election cycle. To avoid potential statute of limitations problems in the future, this Office will track its cases against the relevant statute of limitations and will perform regular reviews of its caseload. In addition, this Office will be making periodic recommendations to the Commission with respect to matters that may be affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462.

¹ Pending the court's decision, issues such as equitable relief, equitable tolling and ongoing violations, will remain open. In some instances, although issues such as equitable tolling and equitable relief may still be viable, this Office has cited other factors to support our recommendation to close the matter. See, e.g., cases involving apparent violations of 2 U.S.C. § 441a(f).

² This Report addresses enforcement matters assigned to the Public Financing, Ethics & Special Projects ("PFESP") and Enforcement areas.

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

B. Take no action, close the file and approve the appropriate letters in the following matters:

1. MUR 4267
2. MUR 4370
3. MUR 4392
4. MUR 4432
5. MUR 4468
6. MUR 4591
7. MUR 4614

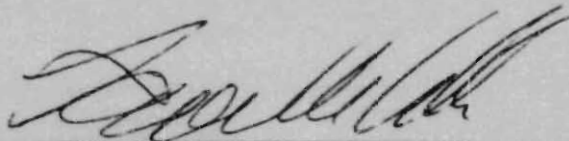
C. Take no further action, close the file and approve the appropriate letters in the following matters:

1. MUR 3351
2. MUR 3571
3. MUR 3582
4. MUR 3586
5. MUR 3838
6. MUR 3841
7. MUR 3969
8. MUR 4091
9. MUR 4183
10. MUR 4209

97043800441

97043800442

3/4/97
Date



Lawrence M. Noble
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) Agenda Document #X97-15
28 U.S.C. § 2462,)
Statute of Limitations)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document #X97-15:

1. Decided by a vote of 5-0 to -
 - A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.
 - B. Take no action, close the file, and approve the appropriate letters in the following matters:
 1. MUR 4267;
 2. MUR 4370;
 3. MUR 4392;
 4. MUR 4432;
 5. MUR 4468;
 6. MUR 4591;
 7. MUR 4614.

(continued)

97043800443

C. Take no further action, close the file, and approve the appropriate letters in the following matters:

1. MUR 3351;
2. MUR 3571;
3. MUR 3582;
4. MUR 3586;
5. MUR 3838;
6. MUR 3841;
7. MUR 3969;
8. MUR 4091;
9. MUR 4183;
10. MUR 4209.

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

(continued)

9.70443800444

Federal Election Commission
Certification: Agenda Document
#X97-15
March 11, 1997

Page 3

3-12-97
Date

Attest:

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

970443800445



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 28, 1997

George E. Comerford, Treasurer
Democratic Executive Committee of Florida
517 North Calhoun Street
Box 1758
Tallahassee, FL 32302

RE: MUR 4267

Dear Mr. Comerford:

On September 28, 1995, the Audit Division referred certain matters to the Office of General Counsel involving the Democratic Executive Committee of Florida ("the Committee"), and George E. Comerford, as treasurer, for possible enforcement action. See Referral Materials. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b).

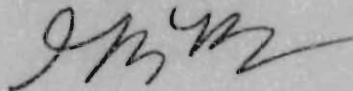
After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Committee, and George E. Comerford, as treasurer. Accordingly, the Commission closed its file in this matter on March 11, 1997. The Commission reminds you, however, that the activity set forth in the referral appears to constitute apparent violations of the Federal Election Campaign Act of 1971, as amended ("FECA"). You should take immediate steps to insure that this activity does not occur in the future.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

97043800446

If you have any questions, please contact me at (800)424-9530 or (202) 219-3690.

Sincerely,



Gregory R. Baker
Special Assistant General Counsel

Enclosure

Referral Materials

97043800447

MUR 4267 (Democratic Executive Committee of Florida)
(audit referral) ('92 cycle)
PFESP Docket (Inactive)

The Audit Division referred this matter on September 28, 1996. The referral involves two issues: (1) use of funds from a non-federal account totaling \$820,269; and (2) expenditures in connection with federal elections funded by the non-federal account totaling \$62,691. This Office recommends that the Commission exercise its prosecutorial discretion and take no action with respect to this matter, and close the file. The activities at issue occurred on July 1, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations. If the Commission adopts these recommendations, the notification letter will include the appropriate admonishment language.

97043800448



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4267

DATE FILMED 4-25-97 CAMERA NO. 1

CAMERAMAN JM H

97043800449