



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4433

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COMMISSION
OFFICE OF GENERAL
COUNSEL

July 23, 1996

Ms. Lee Ann Elliott
Chair
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Dear Ms. Elliott:

I am writing to request that the Federal Election Commission investigate certain aspects of the campaign spending of William Delahunt, candidate for Congress in the Massachusetts 10th Congressional District. Mr. Delahunt is the Norfolk County District Attorney. He has run for re-election as D.A. unopposed since 1976.

There are two specific issues I would like the FEC to address. First, I am requesting an investigation into Mr. Delahunt's use of funds for his District Attorney campaign committee (hereafter "Delahunt D.A. Committee") for expenses for his federal Congressional campaign (hereafter "Delahunt Congressional Committee") -- an action prohibited by a January 1993 ruling by the FEC.

The second investigation I am requesting is of the Delahunt Congressional Committee's potentially improper classification of staff as "consultants" (independent contractors) rather than "employees". It appears likely that these members of Mr. Delahunt's staff do not meet strict IRS tests for being independent contractors. If Delahunt Congressional Committee staff have been improperly paid as independent contractors, there are significant tax implications.

I. Commingling of State and Federal Funds

A review of expenditures by the Delahunt D.A. Committee and the Delahunt Congressional Committee raises questions about commingling of campaign expenditures. Prior to January 1993, commingling of state and federal funds -- using state funds for a federal race -- was permissible. In January 1993, the Federal Election Commission changed its regulations to prohibit state campaign expenditures in Congressional races. This rule change took effect July 1, 1993, under Title 11, C.F.R., 110.3 (d), which states:

Under new FEC regulations, a candidate's authorized (federal) committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal election campaign. (This rule took effect July 1, 1993).

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In "Reports of Expenditures" filed with the Massachusetts Office of Political and Campaign Finance since December 1995, the Delahunt D.A. Committee has reported the following fees paid to Cosgrove, Eisenberg, & Kiley, totalling \$17,982.88.

Date	Payee	Purpose	Amount
12/26/95	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$8,375.00
1/17/96	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$1,457.50
2/28/96	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$1,437.50
4/08/96	Cosgrove, Eisenberg, & Kiley	"Legal Services (2/1/96-2/29/96)"	\$2,422.88
5/14/96	Cosgrove, Eisenberg, & Kiley	"Legal Services 3/1/96 to 4/25/96"	\$2,290.00
6/18/96	Cosgrove, Eisenberg, & Kiley	"Prof. Services through 5/31/96"	\$2,000.00
TOTAL			\$17,982.88

First, the data in this spreadsheet lead to the following conclusion: *the sudden jump in legal services paid from the Delahunt D.A. Committee fund raises questions about whether these expenditures were directed, in part or in whole, toward Mr. Delahunt's concurrent Congressional campaign.*

The questions raised here are bolstered by the fact that *Thomas Kiley, a partner in the firm Cosgrove, Eisenberg, & Kiley, is the Treasurer of the Delahunt for Congress Committee.* The Delahunt Congressional Committee does not appear to have ever paid for legal services to Mr. Kiley's firm, even though a review of Mr. Delahunt's state campaign shows that he has historically compensated his campaign treasurers for their work in his D.A. races. It is reasonable to conclude that Mr. Delahunt may be continuing his practice of compensating his campaign Treasurer, but from the improper pool of funds.

This conclusion is strengthened by the facts that (1) Mr. Kiley's firm was hired by the Delahunt D.A. Committee *after* he became a candidate for Congress, and (2) Mr. Delahunt maintains a different Treasurer for the Delahunt D.A. Committee account.

In addition, Mr. Delahunt has publicly announced his intentions possibly to step down from his D.A. seat if he does not win the Congressional seat. In the *Quincy Patriot-Ledger* on May 2, 1996, he is quoted as saying, "...he may step down before the end of his term as district attorney if he loses his bid for Congress." *The Cape Codder* reported on April 26, 1996, "[Delahunt] has said he will consider retiring if he doesn't win the seat ..." Therefore, it appears unlikely that Mr. Delahunt would need to spend funds on legal services for a D.A. campaign that is not occurring now and probably will not occur in the future.

In conclusion, Mr. Delahunt appears to have been using his DA campaign fund to support his Congressional campaign. If this is the case, the practice would both place Mr. Delahunt in an unfair position with regard to his competitors and would violate both the letter and spirit of FEC regulations. For the FEC's interest, please find enclosed a copy of an article from *The Boston*

Globe which raises additional questions regarding potential commingling of state and federal funds.

Please also find enclosed copies of the original campaign spending reports, with relevant expenditures highlighted.

II. Improper Classification of Staff as "Consultants" and Consequent IRS Questions

Mr. Delahunt has been paying Delahunt Congressional Committee staff as consultants, rather than salaried staff. In Mr. Delahunt's most recent FEC filing, of June 30, six staff members -- James W. Woodruff, A. Joseph Gillis, Thomas Ahern, Paul J. O'Sullivan, Michael Shea, Malinda Howard -- were being paid as "consultants" (or "independent contractors") rather than as "employees." The term "independent contractor" is a stringently defined classification by the IRS, including a number of criteria which it is unlikely the Delahunt Congressional Committee has met.

In a memorandum dated September 22, 1995, from Perkins Coie, a Washington, D.C. law firm specializing in election law that serves as a resource for Democratic Congressional campaigns, IRS Revenue Ruling 87-14, which regulates employer use of the independent contractor category, is described as follows:

... [T]he IRS generally does not favor the use of independent contractors and takes a restrictive view of which individuals qualify as independent contractors versus employees. Further, employees who misclassify workers as independent contractors may be subject to back taxes, interest and penalties ...

According to the memorandum, independent contractor status is subject to a set of strict guidelines, which it is reasonable to assume the Delahunt Congressional Committee has not met. These include:

- **Control.** "Independent contractors generally set their own hours and work from whatever location they choose."
- **Full Time Required vs. Services for Other Persons.** "An independent contractor is generally free to work when and for whom he or she chooses If the worker is required to devote substantially full time to the business of the person for whom the services are performed, or such person has control over the amount of time the worker spends working and can restrict the worker from doing work for other entities [this] would again, indicate an employer-employee relationship."
- **Payment Schedule.** "Payment to an independent contractor should be by the job, although periodic payments may be made as a convenient way of paying a lump sum agreed upon as the cost of a job. Payment by the hour, week or month generally indicates an employer-employee relationship."

Following is a table of paid staff reported by the Delahunt Congressional Committee as "consultants" in its June 30, 1996 FEC filing:

Date	Payee	Purpose	Amount
4/1/96	James W. Woodruff	"Consultant fee"	\$2,250
4/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
4/1/96	Thomas Ahern	"Consultant fee"	\$2,000
4/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
4/1/96	Michael Shea	"Consultant fee"	\$5,000
4/1/96	Malinda Howard	"Consultant fee"	\$1,500
5/1/96	Michael Shea	"Consultant fee"	\$5,000
5/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
5/1/96	James W. Woodruff	"Consultant fee"	\$2,250
5/1/96	Thomas Ahern	"Consultant fee"	\$2,000
5/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
5/30/96	Thomas Ahern	"Consultant fee"	\$2,000
6/1/96	Michael Shea	"Consultant fee"	\$5,000
6/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
6/1/96	James W. Woodruff	"Consultant fee"	\$2,250
6/1/96	Malinda Howard	"Consultant fee"	\$1,500
6/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
6/1/96	Elizabeth Griffin	"Consultant fee"	\$3,000
TOTAL			\$50,250

Unless the Delahunt for Congress Committee has met the many stringent criteria for describing and paying its staff as consultants -- which is unlikely in several instances, particularly in the case of Paul J. O'Sullivan, Mr. Delahunt's Congressional Campaign Manager -- it is reasonable to conclude that the Delahunt for Congress Committee may be avoiding the payment of Social Security, Medicare, unemployment, and other taxes as well as various other expenditures associated with "employee" rather than "independent contractors" payments. The memorandum concludes:

Campaigns should, therefore, be very careful to classify individuals as independent contractors only in those circumstances where the individual meets the criteria of an independent contractor under IRS guidelines. In this case, the campaign should also take steps to ensure that the individual's status is carefully documented, as, for example, with a specific contract setting forth the individual's independent contractor status, and with a letter related to hiring which sets out the duty of an independent contractor to pay all relevant taxes.

Based on these descriptions of the criteria for paying staff as employees rather than independent contractors, we ask the following questions:

1. Has the Delahunt Congressional Committee signed the aforementioned specific contracts with the six staff listed above, documenting their status as "consultants

(independent contractors)" rather than "employees" in accordance with IRS regulations?

2. Has the Delahunt Congressional Committee provided the aforementioned letters related to hiring that set out the six staff members' duty to pay all relevant taxes?
3. Have the relevant taxes been paid, either by the Delahunt Congressional Committee or the six staff members?

Please find enclosed copies of the original campaign spending reports, with relevant expenditures highlighted, as well as a copy of the Perkins Coie memorandum.

* * *

It is my belief that Mr. Delahunt may be gaining a significant and unfair advantage over his opponents through improper patterns of campaign spending in two areas: from the Delahunt D.A. Committee to the Delahunt Congressional Committee -- prohibited by the Federal Election Commission -- and by paying staff as consultants rather than employees from Delahunt Congressional Committee funds -- prohibited by the Internal Revenue Service. Such patterns indicate a potential lack of regard for strict federal regulations intended to provide a level playing field for all candidates in a Congressional race.

Thank you very much for your attention to these two requests for investigation. Please do not hesitate to contact me or my campaign manager, Michael Signer, at (508) 457-4146, should you or your staff have any questions related to this matter. I look forward to a response at your earliest convenience.

Sincerely,



Ian A. Bowles

Metro Region

THE BOSTON GLOBE • TUESDAY, JULY 23, 1996

Delahunt spending questioned

Foes say state campaign funds
aiding DA's bid for Congress

By Michael Grunwald
GLOBE STAFF

Over the last 20 years, Norfolk County District Attorney William Delahunt has charged some unusual expenses to his state campaign fund.

According to state records, the fund donated \$9,000 to Delahunt's alma mater, Middlebury College. It picked up \$100,000 worth of his tabs at eateries from Boston to Bermuda, Vail to Vermont. It even bought \$4,231 worth of Boston Celtics tickets.

Now Delahunt is running for Congress, and his Democratic rivals allege he has found a new way to spend his state campaign funds: on his federal campaign, despite election laws barring the commingling of the two accounts. Delahunt aides deny the allegations, but his campaign records do show unusual patterns.

Delahunt aides deny the allegations, but his campaign records do show unusual patterns.

For instance, although Delahunt announced his candidacy for Congress in November, his federal campaign has yet to pay a penny to its treasurer, Boston attorney Thomas Kiley. But since November, Kiley has billed Delahunt's dormant state campaign fund for \$18,000 in legal fees. Ian Bowles, another Democrat hoping to replace US Rep. Gerry Studds, is about to ask federal officials to investigate whether the payments violated commingling laws.

Kiley said the payments are perfectly legitimate. He said he volunteers his time to Delahunt's congressional

DELAHUNT. Page B4

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Foes question Delahunt's campaign spending

■ DELAHUNT

Continued from Page B1

campaign because he believes in his candidacy. But he said he still charges the state account for legal work – and over the last year, as the state Office for Campaign and Political Finance investigated Delahunt's lavish campaign spending, he has had plenty to do.

As Kiley pointed out, his work was well worth the price. The campaign finance office found no wrongdoing, ruling, for example, that all 224 restaurant and bar tabs Delahunt charged to his campaign in 1994 served legitimate political purposes.

"As the Globe knows well, I have done a considerable amount of work with respect to Bill's campaign finances, and my efforts have been successful," said Kiley, who had billed the state account for only \$2,750 before Delahunt announced his candidacy for Congress. "For someone to try to make a political issue of this, it just borders on the absurd. It sounds pretty desperate."

For his opponents, though, Dela-



WILLIAM DELAHUNT
Raised \$470,000 for federal race

hunt's now-useless \$133,000 state fund would represent a sizable threat if it could be added to the impressive \$470,000 raised by his congressional campaign. Massachusetts House Minority Leader Edward Teague of Yarmouth, considered by

many the Republican front-runner, has raised \$400,000. Delahunt's closest Democratic challenger, Philip Johnston, has raised \$200,000. Bowles has raised \$175,000.

Bowles says he will send a letter to the Federal Election Commission today, requesting a review of the payments to Kiley.

Johnston said Delahunt's public campaign records are "incredible," and called on Delahunt to release his personal tax records. Delahunt is the only candidate who has refused to do so.

"There's a real pattern here," Johnston said.

Another odd pattern: Since November, while Delahunt's congressional campaign has raked in that \$470,000, it has listed no accounting expenses. But his vestigial state campaign, which has not collected a single donation in that time, has paid \$5,278 in accounting fees to the Quincy firm of Corner & Dandrow.

Calls to the firm were not returned yesterday. But Kiley said he believes its situation parallels his: The accountants are volunteering their time to the congressional cam-

paign, while continuing to bill the state campaign. And he cited a specific federal law – CFR 11, Section 110.7(b)(14) – that permits lawyers and accountants to donate billable hours.

"That is a completely frivolous complaint," Kiley said. "We are allowed to express our First Amendment rights."

In fact, Delahunt made a similar pattern of payments to one of Boston's most prominent public relations firms: Regan Communications, owned by his his good friend George Regan.

Since 1992, when Delahunt first considered a run for Congress, his state campaign fund has spent \$45,000 on Regan's high-powered firm. When Delahunt jumped into the congressional race, the payments stopped.

Regan says the payments were all legal, but Delahunt's opponents say it is odd that he needed Regan for his DA races, but not for this one.

Delahunt has not had an opponent for district attorney since 1976.

CAMPAIGN GUIDE



**FOR CONGRESSIONAL
CANDIDATES AND
COMMITTEES**

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CHAPTER 7

Expenditures and Other Disbursements

It is important to understand the term *expenditure* because expenditures count toward the threshold that determines whether an individual is a candidate under the Federal Election Campaign Act. 100.3(a). An expenditure is a purchase or payment made to influence a federal election. 100.8(a)(1).

Disbursement is a broader term that covers both expenditures and other kinds of payments (those not made to influence a federal election). All disbursements are reportable by the campaign.

In numerous *advisory opinions* the Commission has consistently stated that, because the Act places no specific restrictions upon the types of disbursements that may influence a federal election, campaigns have wide discretion in deciding how to spend their funds. The Act does, however, restrict the use of *excess campaign funds*, as explained on page 33. Note that the use of campaign funds is also addressed in House and Senate rules, over which the Commission has no jurisdiction (see Appendix G).

1. Expenditures

Operating Expenditures

Payments for operating expenses, such as staff salaries, rent, travel, advertising, telephones, office supplies and equipment, fundraising, etc., are *operating expenditures*.

Note that if a campaign pays for the candidate's personal living expenses when he or she is actively campaigning, those payments are also considered operating expenditures. (See page 11.) However, if a candidate pays for his or her living expenses with *personal funds*, the payments are not considered expenditures and are not reportable by the campaign. 100.8(b)(22).

Note also that an *in-kind contribution* received by a committee, although not technically an expenditure, must be reported as an operating expenditure in addition to being reported as a receipt.

104.13(a). This reporting adjustment allows the committee to balance its cash on hand. A campaign expenditure made from the candidate's personal funds is considered an in-kind contribution and is thus also reportable as an operating expenditure.

Written Agreements to Make Expenditures

A written agreement to make an expenditure, such as a media contract, constitutes an expenditure. 100.8(a)(2). Such an expenditure is reportable as a debt at the time the agreement is made if the debt exceeds \$500. A written agreement of \$500 or less must be reported as a debt if it has been outstanding 60 days. (The same reporting rule applies to other debts as well. See page 31.) 104.11(b).

2. Other Disbursements

Loan Repayments

A repayment of a loan is not an expenditure but is a reportable disbursement. 100.8(a)(1)(ii).

Donations to Nonfederal Candidates

A donation to a state or local candidate or to an organization that is not a *political committee* is not considered a contribution or an expenditure because the donation is not made for the purpose of influencing a federal election. However, such disbursements are subject to relevant state law, and they are reportable.



CHAPTER 8

Transfers

This chapter describes the different types of transfers that *authorized committees* may receive and make. Transfers of funds and assets between committees authorized or established by the same candidate are generally unlimited because the committees are considered *affiliated committees*.¹ Note, however, that under new FEC regulations, an *authorized committee* of a federal candidate may not accept any transfers of funds or assets from a committee established by the same candidate for a nonfederal election. This prohibition took effect July 1, 1993. See Section 4, below.

1. Transfers Between Committees of Candidate's Current Campaign

Funds and assets may be transferred without limit between a candidate's *principal campaign committee* and other committees authorized by the same candidate for the same election.² 110.3(a)(1)(i) and (c)(1).

2. Transfers Between Candidate's Previous and Current Committees

General Rule

Funds and assets may be transferred without limit between committees authorized by a candidate within the same *election cycle* or in different election cycles. 110.3(c)(4). For example, the principal campaign committee of a 1994 House candidate may transfer funds remaining after the 1994 general election to retire debts from the candidate's 1994 primary

1. An authorized committee may not transfer funds to another authorized committee of the same candidate, however, if the transferring committee has net debts outstanding. 116.2(c)(2)

election or from the same candidate's 1992 general election campaign for the House. As another example, the 1994 committee of a House candidate may transfer general election funds to the candidate's 1996 committee for use in the primary election.

Aggregation of Contributions

For the purposes of the contribution limits, contributions transferred from a previous campaign to the current campaign must be aggregated with contributions by the same donors to the current campaign only if the transferred contributions were originally made:

- After the previous election was held; or
- After the candidate withdrew or otherwise ceased to be a candidate in the previous election.

110.3(c)(4)(iii) and (iv).

See page 9 for information on how to determine the date when a contribution is made. Other rules also apply to contributions that a committee receives after an election; see "Designated and Undesignated Contributions" on page 8.

3. Transfers to Candidate's Nonfederal Committee

A candidate's authorized committee may transfer unlimited funds and assets to a committee established by the same candidate for election to a nonfederal office (for example, a gubernatorial campaign committee). 102.6(a)(1)(i). Such transfers, however, are subject to relevant state law. See, for example, *Advisory Opinion* (AO) 1986-5.

4. Transfers from Candidate's Nonfederal Committee Are Prohibited

Under new FEC regulations, a candidate's authorized (federal) committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal election campaign. (This rule took effect July 1, 1993.) At its option, however, a nonfederal committee of the same candi-

date may refund its leftover funds to its contributors and may coordinate arrangements with the federal campaign for a solicitation of those same persons. The full cost of this solicitation must be paid by the federal committee. 110.3(d).²

5. Transfers Between Committees of Candidates Seeking More Than One Office

When an individual seeks election to more than one federal office during the same election cycle or overlapping election cycles,³ special transfer rules apply. The situations to which these rules apply can be illustrated with the following examples:

- Candidate A runs for both the House and the Presidency in the 1996 primary election (as permitted by state law).
- Candidate B begins the 1994 election cycle as a House candidate but later begins a campaign for a Senate seat in 1994.

Prohibited Transfers

No transfers of funds or assets may be made between a candidate's separate campaign committees while the candidate is "actively seeking" more than one office at the same time. 110.3(c)(5) and 110.8(d)(2). In the above examples, Candidate A would be prohibited from transferring funds because he was "actively seeking" two offices at the same time.

Additional rules prohibit any transfers to or from a campaign account of a Presidential candidate who has accepted public financing, regardless of the timing or amount of the transfer. 110.3(c)(5)(iii).⁴

This restriction would apply to Candidate A if he received public funds for his Presidential campaign.

Permissible Transfers

Once a candidate is no longer "actively seeking" election to more than one federal office, transfers between the two campaigns are permissible, within the following guidelines:

- The transferor committee's available funds should be viewed as those contributions most recently received that total the amount on hand.
- Contributions transferred must be aggregated with any contributions made by the same donor to the committee receiving the transfer. Amounts that would cause a contributor to exceed his or her per-election contribution limit must be excluded from the transfer. 110.3(c)(5)(ii). By taking these steps, Candidate B in the above example could transfer funds between her two campaigns once she was no longer "actively seeking" two offices at the same time.

Definition of No Longer "Actively Seeking"

Under FEC rules, a candidate is no longer "actively seeking" nomination or election to a particular office once he or she:

- Becomes ineligible for nomination or election to that office by operation of law;
- Publicly announces that he or she is withdrawing from one race and ceases to campaign for that election;
- Has filed a termination report (see page 35); or
- Has notified the Commission that his or her campaign will conduct no further activities with respect to that election, other than fundraising to retire outstanding debts.

110.3(c)(5)(i).

6. Transfers of Joint Fundraising Receipts

Transfers of receipts raised in compliance with joint fundraising procedures are unlimited. 102.6(a)(1)(iii). A committee receiving such a transfer must not only report the total amount transferred but must also itemize, as necessary, its share of gross proceeds as contributions from the original contributors. 102.17(c)(8)(i)(B). For more information, see Appendix E.

2. For more information, see 58 Fed. Reg. 14310 (March 17, 1993).

3. Additionally, under FEC rules, a candidate seeking more than one office must establish separate principal campaign committees and must maintain completely separate campaign organizations. 110.8(d)(1). Contributors also have separate limits with respect to the separate campaigns of the same candidate.

4. But see AO 1986-5 regarding transfers of funds remaining in a Presidential committee's account after all repayment obligations, outstanding debts and applicable penalties have been paid.

NAME OF BANK: Fleet Bank of MA
 REPORTING PERIOD FROM: 12/16/95 TO: 12/31/95

DATE CHECK PAID	PAYEE	ADDRESS	SPECIFIC CODE PURPOSE	AMT
12/18/95	American Express	P.O. Box 1270 Newark NJ 07101	9 D.A.'s Meetings	.54
12/26/95	Cosgrove, Eisenberg & Kiley	803 Hancock St Quincy MA 02170	9 Legal Services	8,375.00
12/27/95	First National Bank of Boston	P.O. Box 15588 Providence RI 02901	9 Office Rent	500.00
12/18/95	Gillis, Joseph	290 Quarry St Quincy MA 02169	9 Fund Raising Director Severance Pay	3,000.00
12/19/95	Jack Davis Florist	2097 Centre Street W. Roxbury MA 02132	9 Floral Arrangement	48.00
12/26/95	Rosie's Place	889 Harrison Ave Roxbury MA **	9 Contribution	200.00
12/26/95	The Atlantic Neigh Assoc	12 Hunt Street No Quincy MA 02171	* Contribution	50.00

TOTAL THIS REPORT PERIOD: 13,026.54

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Report of Expenditures

CANDIDATE NAME: William Delahunt
 COMMITTEE NAME: The Delahunt Committee
 NAME OF BANK: Fleet Bank of MA
 REPORTING PERIOD FROM: 1/1/96 THROUGH 1/31/96

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PAGE # 1

DATE CHECK PAID	PAYEE	ADDRESS	SPECIFIC CODE PURPOSE	AMOUNT
1/30/96	Comm To Elect Ann Federico	95 Outlook Road Marshfield MA 02050	9 Candidate for State Comm Woman	100.00
1/17/96	Cosgrove, Eisenberg & Kiley P.C.	P.O. Box 189 Quincy MA 02170	9 Legal Services	1,457.30
1/26/96	Cystic Fibrosis Foundation	220 N. Main St Natick MA 01768	9 Contribution	100.00
1/17/96	Duffy, Helen L.	1 Forsythia Lane Rockland MA 02370	9 Bookkeeping Services	1,500.00
1/29/96	Glastonbury Abbey	16 Hull St Hingham MA 02043	9 Annual Perpetual Enroll	5.00
1/31/96	Glastonbury Abbey	16 Hull St Hingham MA 02043	9 Spiritual Bouquet	10.00
02/96	M A M H	130 Bowdoin St Boston MA 02108	9 Contribution	100.00
04/96	M C A D P	P.O. Box 3404 Boston MA 02101	9 Contribution	100.00
0/96	Perette, Joan	28 Regatta Road No Weymouth MA 02191	9 Campaign Finance Staff	1,000.00
3/96	Quincy Comm Action Program	388 Granite St Quincy MA 02169	9 Contribution	100.00
1/96	Quincy Public Schools Testimonial Fund	1012 Hancock St Quincy MA 02169	9 2 Tickets	30.00
'96	St. Coletta's of MA Inc.	400 Washington St Hanover MA 02339	9 Contribution	100.00
96	The Louis F. Angelo Mem Scholarship	1090 Main St Brockton MA 02401	9 Contribution	100.00

TOTAL THIS REPORT PERIOD: 4,702.50

For Bank Use Only

Report of Expenditures
Report of Expenditures

CANDIDATE NAME: William Delahunt
 COMMITTEE NAME: The Delahunt Committee
 NAME OF BANK: Fleet Bank of MA
 REPORTING PERIOD FROM: 2/1/96 THROUGH 2/29/96

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PAGE # 1

DATE CHECK PAID	PAYEE	ADDRESS	SPECIFIC CODE PURPOSE	AMOUNT
2/05/96	American Express	P.O. Box 114 Newark	9 D.A.'s Meetings NJ 07101	2,153.25
2/22/96	Assoc of JoJo White Growth Dedham Club	200 VWF Parkway Dedham	9 Team Sponsorship MA 02026	1,000.00
2/26/96	Bridgewater Visiting Nurses	5 Wally Kough Way Bridgewater	9 Memory of Edith Flynn MA 02324	100.00
2/28/96 5	Casnone Eisenberg Kiley PC	803 Hancock ST Quincy	9 Legal Services MA 02170	1,437.50
2/27/96 0	Chinese Progressive Education	164 Lincoln St Boston	9 Contribution MA 02111	100.00
2/28/96 2	Committee to Elect Dave Chandler	452 Pleasant St S Weymouth	9 Political Contribution MA 02190	100.00
2/01/96 80	Edward T Sullivan Labor/Mgmt Ctr	34 Coddington St Quincy	9 Memory of Edward T Sullivan MA 02169	100.00
2/23/96 4	For the Love of Life	29 Stanhope Street Boston	9 Annual benefit ticket MA 02116	75.00
2/20/96 7	Glastonbury Abbey	16 Hill St Hingham	9 Contribution MA 02043	100.00
2/08/96 6	Mass Council for Public Justice	20 West St Boston	9 Membership Dues MA 02111	25.00
2/28/96	Postmaster	** Boston	9 .32 100 stamps MA **	32.00
2/07/96	Quincy Lions	P.O. Box 27 Quincy	9 Contribution MA 02170	50.00
2/29/96	S Shore Visit Nurses Ass	100 Bay State House Braintree	9 Memory of D Missona MA 02184	100.00
2/21/96	The Finneian Committee	PO Box 8907 JFK STA Boston	9 Political Contribution MA 02114	100.00
2/28/96	The Klimm Comm	204 W Brookline St 5 Boston	9 Political Contribution MA 02118	100.00

TOTAL THIS REPORT PERIOD: 5,572.75

CANDIDATE NAME: William Delahunt
 COMMITTEE NAME: The Delahunt Committee
 NAME OF BANK: Fleet National Bank
 REPORTING PERIOD FROM: 4/1/96 THROUGH 4/30/96

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PAGE # 1

DATE CHECK PAID	PAYEE	ADDRESS	CODE	SPECIFIC PURPOSE	AMOUNT
4/10/96	ACLUF Foundation of MA	99 Chauncy St Boston MA 02111	9	Contribution	100.00
4/30/96	Comm for Brian Donnelly	14 Bristol Drive Duxbury MA 02332	9	Political Contribution	100.00
4/08/96	Comm. to Re-Elect Tom Cahir	P.O. Box 636 Pocasset MA 02559	9	Political Contribution	100.00
4/22/96	Corner Dandrow & Co	1419 Hancock St Quincy MA 02169	9	Tax and Accounting Services	2,346.00
4/08/96	Cosgrove Eisenberg & Kiley	803 Hancock St Quincy MA 02170	9	Legal Services (2/1/95-2/29/96)	2,422.84
4/18/96	Int Assoc of Basketball Office	117 Yale St Medford MA 02155	9	Ad	150.00
4/17/96	Kathy Teahan for State Rep	78 Harvard St Whitman MA 02382	9	Political Contribution	100.00
4/08/96	Mary Sue Ryan Committee	81 Old Colony Drive Weymouth MA 02188	9	Political Contribution	50.00
4/30/96	Moore for Senate Committee	P.O. Box 496 Uxbridge MA 01569	9	Political Contribution	100.00
4/29/96	So Shore Women's Center	225 Water St Plymouth MA 02360	9	Contribution	100.00
4/19/96	South Shore ARC	371 River St No. Weymouth MA 02191	9	Donation	100.00
4/24/96	The Search for Grand Bostonians	55 Cooper St Boston MA 02113	9	Contribution	50.00
4/08/96	The Second Step, Inc	P.O. Box 213 Newtonville MA 02160	9	Contribution	45.00
4/23/96	WBET AM 1460	60 Main St Brockton MA 02403	9	Community Campaign Child Abuse Month	199.00
TOTAL THIS REPORT PERIOD:					5,962.84

For Bank Use Only
Report of Expenditures
 Report of Expenditures

CAMPAIGN FOL 11A
 FILE

CANDIDATE NAME: William Delahunt
 COMMITTEE NAME: The Delahunt Committee
 NAME OF BANK: Fleet National Bank
 REPORTING PERIOD FROM: 5/1/96 THROUGH 5/31/96

JUN 5 3 54 PM '96

PAGE # 1

DATE CHECK PAID	PAYEE	ADDRESS	SPECIFIC CODE PURPOSE	AMOUNT
5/31/96	Big Sister Assoc of Gr Boston	161 Mass Ave Boston MA 02115	9 Big Sister Raffle	200.00
5/17/96	Brockton Democratic City Comm	45 E Ashland St Brockton MA 02402	9 Sponsor a race @ Raynham	100.00
5/08/96	Catholic Charities	49 Franklin St Boston MA 02110	* 20 Anniversary of Cardinals Garden Par	250.00
5/21/96	Cerebral Palsy of the So Shore	105 Adams St Quincy MA 02169	9 Program Book Full Page Ad	100.00
5/10/96	Commonwealth of Mass	P.O. Box 7070 Boston MA 02204	9 Form 3M	246.00
5/14/96	Cosgrove, Eisenberg & Kiley P.C.	803 Hancock St Quincy MA 02170	9 Legal Services 3/1/96 to 4/25/96	2,290.00
5/31/96	Fleet National Bank	** ** **	* Account Activity Fees	11.30
5/03/96	Green Wave Boosters Inc	P.O. Box 2140 Abington MA 02351	* Golf Tournament Hole Sponsor	50.00
5/14/96	H.C. Bradlet Cont Ed Scholarship Fund	2035 Wellesley St Weston MA 02193	9 Contribution	100.00
5/28/96	Inst For Asian American Studies	100 Morrissey Blvd Boston MA 02125	9 Fund Raiser Contribution	250.00
5/15/96	Mass Assoc for Mental Health	130 Bowdoin St Boston MA 02108	9 Contribution	150.00
5/23/96	Mass Democratic Party	45 Bromfield St Boston MA 02108	9 State Convention Delegate Fee	40.00
5/15/96	Middlebury Annual Fund	Middlebury College Middlebury VT 05753	9 Annual Fund	1,500.00
5/24/96	QHS Basketball Alumni Club	20 Glynn Terrace Quincy MA 02169	9 1/4 page Ad	50.00
5/20/96	Quincy Community Action	1509 Hancock St Quincy MA 02169	* Tickets Celebrity Dinner & Auction	100.00
5/13/96	Quincy Korean War Memorial Fund	P.O. Box 0161 Quincy MA 02169	9 Golf Tournament Hole Sponsor	100.00

Report of Expenses

CHECK NO.

DATE NAME: William Delahunt
 COMMITTEE NAME: The Delahunt Committee
 NAME OF BANK: Fleet National Bank
 REPORTING PERIOD FROM: 6/1/96 THROUGH 6/30/96

JUL 3 10 43 AM '96

CHECK NO	PAYEE	ADDRESS	CODE	SPECIFIC PURPOSE	AMOUNT
6/04/96	Ancient Honor of Hibernians	S. Shore Division 32 Weymouth MA 02190	9	Sponsor-Charity Golf Tourn.	100.00
6/18/96	Cosgrove, Eisenberg & Kilry P.C.	803 Hancock St Quincy MA 02170	9	Prof services through 5/31/96	2,000.00
6/12/96	Family Counseling and Guidance Center	40 Independence Ave Braintree MA 02184	9	Contribution	300.00
6/03/96	Glastonbury Abbey	16 Hull Street Hingham MA 02043	9	Contribution	100.00
6/07/96	Lakeview Manor Tenant Assoc	77 Memorial Drive E. Weymouth MA 02109	9	Sponsor for about 2 Weeks at Camp	150.00
6/06/96	March of Dimes Mothers March	13 Kitch Lane Quincy MA 02171	9	Contribution	150.00
6/07/96	Montclair/Middleton Mough Assoc	12 Small Street North Quincy MA 02171	9	T-Shirt Sponsor	75.00
6/05/96	Postmaster	*** Boston MA ***	9	100 32 cent stamps	32.00
6/03/96	Quincy S. Shore Cultural Commission	551 Washington St Quincy MA 02169	9	Full page ad in Summerfield Program	100.00
6/11/96	Rockland Democratic Town Comm.	294 North Ave Rockland MA 02370	9	4 Breakfast tickets	60.00
6/05/96	Stop Handgun Violence, Inc.	29 Crafts St. Su 300 Boston MA 02158	9	Reception tickets	100.00
6/27/96	The Committee To Elect Tom O'Brien	27 Longwood Circle Kingston MA 02364	9	Political contribution	50.00
6/21/96	The Paul McLoughlin Portrait Fund	One Ashburton Place Boston MA 02108	9	Contribution	100.00
6/18/96	WBEF	60 Main St Brockton MA 02403	9	Missing person on Day Campaign	199.00
6/03/96	WCAV	60 Main St., PO 787 Brockton MA 02403	9	MADD Public Service Campaign	99.00

TOTAL THIS REPORT PERIOD: 3,615.00

Delahunt officially launches campaign for Studds' seat

By Lane Lambert
The Patriot Ledger

QUINCY — William Delahunt's hometown friends and political supporters were in the Sons of Italy Hall last night to hear the Norfolk County district attorney officially launch his campaign for Congress.

Labor union officers and members were there among a May Day crowd of about 200. So were County Commissioner John Gillis, State Rep. Ron Mariano, a quorum of the Quincy City Council — and voter Christine Graham, a retiree.

"I've liked him for a long time. I've voted for him ever since he was a city councilor in the early '70s," Graham said, as she sat at a table with her friend Anna Hutchings.

The six-term district attorney will be counting on the votes of people like Graham in the months ahead, as he seeks the Democratic nomination for the 10th Congressional District being vacated by U.S. Rep. Gerry Studds, D-Cohasset.

"People know me, and I have a long, positive record as a state legislator and district attorney," Delahunt, 54, said later. "But that will only take you so far. If I articulate the concerns that people across the district are feeling, then I'll win."

Challenging him for the Democratic nomination are Philip Johnston of Marshfield, the former regional director of the U.S. Department of Health and Human Services, Ian Bowles of Woods Hole, a vice president of the Conservation International Foundation, and Walter S. Murray of Hull, a legal secretary who left his job to run for office.

Republican candidates include Massachusetts House Minority Leader Edward Teague of Yarmouth, Steve Pappas of Weymouth and William Sargent, the son of former Gov. Francis Sargent.

Delahunt shrugged off criticism he's drawn from some opponents for not making his tax returns public. Delahunt is the only 10th District candidate who hasn't done that.

"Unfortunately for the media, there's nothing interesting in there," he said of his returns. "It's really the principle of the thing, to maintain a little privacy. Good people aren't running for office these days because they think they'll have to disclose everything about their personal lives."

After campaigning for decades on his crime and domestic violence record, Delahunt is now talking about a full menu of national Democratic issues — the Republican-controlled Congress, a higher minimum wage, environmental protection, corporate layoffs, health care and education.

"This race is about restoring the balance between the worker and corporate America," he said. "I want to help keep the middle class alive and well in America."

Along with economic and job issues, he said he'll also give close attention to the development of environmental technologies, which he said will create jobs and business in the 10th District and other areas of Massachusetts. The district runs from Quincy to Cape Cod and the Islands.

Delahunt delivered the same message earlier yesterday in Scituate, during a visit to the Central Park senior citizen housing complex, and he got the same kind of support there that he got last night from Graham and others in Quincy.

"He's been through the political ranks, he knows the people you need to know," said Anne Scheele, who was a volunteer in Delahunt's first Quincy City Council race. "He



knows how to get things done," she said.

Paul Sheerin, another Central Park resident, agreed. "He's proven he's a representative for the people as a district attorney."

Delahunt's allies in the local political establishment were in evidence there and at his other stops in Chatham and Brockton. Scituate Selectman Kevin Kinsella was at his Central Park visit, and five Quincy City Council members were at the Sons of Italy rally — council president Peter Kolson and councilors Bruce Ayers, Tim Cahill, Michael Cheney and Steve Durkin.

With them, among dozens of union workers, were Paul Ward, the business manager for the International Brotherhood of Electrical Workers Local 103 and Robert Rizzi of the Bricklayers and Allied Craftworkers Local No. 3.

"He's not a new friend to labor," Ward said. "He's been there with us for a long time."

Delahunt has said he may step down before the end of his term as district attorney if he loses his bid for Congress.

Nell Porter Brown of The Patriot Ledger staff contributed to this report.

Congressional Candidates Clash

Johnston Attacks D.A. Delahunt For His Recent Pension Increase

By Matt McDonald

Tenth Congressional District candidate Philip Johnston thumped fellow Democratic rival William Delahunt yesterday for a new law that would potentially increase the latter's pension by two-thirds.

Mr. Delahunt in turn called Mr. Johnston's complaint an attempt by a flagging campaign to get attention.

Gov. William F. Weld signed the state pension bill into law yesterday. It passed the state House of Representatives and Senate two weeks ago.

In addition to allowing veterans to count military service toward their state pension plans, the new law allows district attorneys who retire at 55 would be able to collect the same percentage of their salaries as pension as most other state employees who retire at 65.

Mr. Delahunt, who turns 55 in July, is district attorney of Norfolk County. He has said he will consider retiring if he doesn't win the seat being vacated by U.S. Rep.

Gerry Studds.

Mr. Johnston, a rival for the Democratic nomination, called the legislation "totally inappropriate" at a press conference yesterday outside Colony House, a Barnstable Housing Authority property on Old Colony Drive in Hyannis.

"What it does for Bill Delahunt ... is that it increases his pension from \$33,000 to \$55,000," Mr. Johnston said. "That is a 60 percent-plus increase in his pension in the middle of a congressional campaign. It's breathtaking in its arrogance."

"I call on the district attorney to refuse the money, in that it is an inappropriate increase at a time when direct-care workers in criminal justice and human services have not received a pay increase in eight years."

Although he didn't offer evidence that Mr. Delahunt lobbied for the bill, Mr. Johnston said he'd heard that

district attorneys had. He also noted that Mr. Johnston is the only one of the state's 12 district attorneys he knows of who is considering retirement.

He said the bill, originally intended to help veterans, had changed when it emerged from the House Ways and Means Committee, which shapes appropriations bills.

"The bill went in with no mention of district attorneys. It came out of Ways and Means with the district attorneys covered," Mr. Johnston said.

Mr. Delahunt's campaign manager, P.J. O'Sullivan, released a statement Thursday strongly objecting to Mr. Johnston's interpretation of the change. "Before the enactment of this legislation, district attorneys were the only law enforcement officials not covered by the plan Phil objects to. If he has any doubts about whether these jobs are dangerous and merit inclusion, he should ask the family of Paul McLaughlin, who was gunned down while working in the Suffolk County District Attorney's office. More the point, the press conference is clearly not about legislation, but rather a sad attempt by a campaign which is far behind in the polls, in raising funds, and in getting support to get some attention."

Although Mr. Johnston aimed most of his comments at Mr. Delahunt, he also criticized state Rep. Edward Teague, R-Yarmouth, the House minority leader. Rep. Teague, considered the front-runner in the GOP primary, voted "present" when the House voted on it.

"The minority leader could easily have stopped this, or at least insisted on a debate and a roll call," Mr. Johnston said.

In an interview yesterday, Mr. Teague described himself as between a rock and a hard place, because the bill had political and personal implications for him.

A four-year veteran of the Army who was temporarily

stationed in Vietnam in the early 1970s, Mr. Teague would be eligible under a provision in that would allow state employees to pay into the state pension fund to count up to four years of military service as state service.

Also, as a potential political opponent of Mr. Delahunt, Mr. Teague said, his opposition to the bill would have been seen as sticking it to a rival.

"I am recorded as 'present.' I believe I am the only legislator recorded as 'present,' because without regard as to what I did in the matter, there was the likelihood — which has proven to be true — that someone would try to mischaracterize my action for their political benefit," Mr. Teague said.

He also said that people ought to be encouraged to serve in the military, and be rewarded for their service once they retire.

On the subject of the hazards district attorneys face, Rep. Teague said a better argument for pension increases could be made for assistant district attorneys, who prosecute almost all criminal cases. He, too, pointed to the shooting death of Mr. McLaughlin, adding that assistant district attorneys "deal every single day with the accused, eyeball-to-eyeball District attorneys themselves are not, as a general rule, put in that same situation."

Most state employees, such as clerks and teachers, are in what's called the Group 1 pension plan. If they retire after 30 years of service at 65, they receive 2.5 percent of their highest salary times the number of years served. In other words, a 65-year-old retiree with 30 years of state employment would take 75 percent of his highest year's salary with him in annual pension.

If they retire at 55, most state employees can only take 1.5 percent of their highest salary times years of service. The state employee with 30 years who retires at 55 can only take 45 percent of his salary in yearly pension.

Another pension grade, Group 4, allows state employees to retire at 55 with the same pension formula they would have had if they stayed until they reached 65 — 2.5 percent times number of years served. Group 4 has been traditionally reserved for public safety officials with high-risk jobs, such as police officers, prison officers and firefighters.

The pension law puts district attorneys in that same category.

"Year after year after year, there've been efforts on the part of district attorneys — who serve largely as administrators — to increase their pensions by significant amounts, arguing that they have dangerous jobs that are similar to the jobs that direct-care workers have and the prisons (officers), or policemen and firemen," Mr. Johnston said. "Very few of us ever bought that argument."

Mr. Johnston was a state representative from Marshfield and, later, ahead of the state Executive Office of Human Services. He most recently served as regional administrator for the federal Department of Health and Human Services, before resigning to run for Congress.

Mr. Johnston, who turns 52 in July, worked 18 years for the state. He would earn about \$17,000 to \$18,000 a year in state pension if he retired at 55, he said.

During the press conference, he criticized congressional pension plans as well, noting that former U.S. Rep. Hastings Keith earns more than \$100,000 a year even though he hasn't been in Congress in 24 years. "I don't think members of Congress should get a better deal than other federal employees," Mr. Johnston said.

(Mr. Keith is a long standing critic of the pension system.)

Mr. Teague said he agreed, and went further, suggesting that members of Congress should get no federal pension. Instead, he said congressmen should be eligible for tax deferments from their salary, such as a 401(k) plan.

97043820020

PERKINS COIE
POLITICAL LAW GROUP

TO: 1996 Democratic Congressional Candidates

FROM: Robert F. Bauer, General Counsel
Democratic Congressional Campaign Committee

RE: Independent Contractor vs. Employee

The Internal Revenue Service has published guidelines outlining twenty factors that should be considered in determining whether an individual is an "employee" or "independent contractor." (Revenue Ruling 87-14, copy enclosed.) As a general rule, an independent contractor need not satisfy every guideline to be classified as such, but should meet a majority of those applicable.

This memorandum will summarize the factors that go into such a determination, with a focus on those factors most relevant to campaign workers. Because each campaign is different, this memorandum can only give general guidance and should not be relied on exclusively in making a determination on an individual's status. Campaigns should consult the IRS's published guidance on this matter and may also wish to consult counsel to resolve any remaining questions.

Control. A key factor in determining an employee-employer relationship is whether the entity for whom the services are performed has the right to control and direct the details and manner in which the work is accomplished. For example, an employee generally is required to comply with the employer's instructions about when, where and how the employee is to work. An employer traditionally provides employees with a place to work and the necessary tools to perform that work. Independent contractors generally set their own hours and work from whatever location they choose.

For more information:

Robert F. Bauer (202) 434-1602
B. Holly Schadler (202) 434-1634

Marc E. Elias (202) 434-1625
Alicia Alexion (Legal Assistant-
Compliance Specialist) (202) 434-1658

24 Hour Pager 1-800-608-3145

Other factors to be considered include:

- Integration. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control, and is, therefore, an employee.
- Hiring, Supervising, and Paying Assistants. If the person for whom the services are performed hires, supervises, and pays assistants of the worker, that factor generally shows control over the worker on the job (thereby inferring an employer-employee status).
- Continuing Relationship. A continuing relationship between the worker and the person for whom the services are performed is indicative of an employer-employee relationship. If the worker is engaged for a specific limited project with a clear beginning and end, this may indicate that the individual is an independent contractor.
- Full Time Required vs. Services for Other Persons. An independent contractor is generally free to work when and for whom he or she chooses and performs more than de minimus services for several unrelated persons or firms at the same time. If the worker is required to devote substantially full time to the business of the person for whom the services are performed, or such person has control over the amount of time the worker spends working and can restrict the worker from doing work for other entities would again, indicate an employer-employee relationship.
- Payment Schedule. Payment to an independent contractor should be by the job, although periodic payments may be made as a convenient way of paying a lump sum agreed upon as the cost of a job. Payment by the hour, week or month generally indicates an employer-employee relationship.
- Payment of Business/Travel Expenses. Independent contractors generally pay their own expenses. If the person for whom the services are performed pays or reimburses the worker's business or travel expenses, the worker is ordinarily considered an employee.
- Significant Investment. If the worker invests in facilities that he or she uses in performing services and such facilities are not typically maintained by employees (such as the maintenance of an office rented

at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor.

- Employer Requirements. Using a worker for responsibilities other than the purposes for which the individual was originally engaged, such as completing other tasks around the office, and attending regular mandatory meetings, tends to indicate the worker is an employee.
- Realization of Profit and Loss. A worker who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss upon early termination of his or her contract due to significant investments or a bona fide liability for expenses (such as salary payments to unrelated employees), that factor indicates that the worker is an independent contractor.
- Right to Discharge. The right to discharge a worker is a factor indicating that the worker is an employee, and the person possessing the right is an employer.
- Right to Terminate. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

You should be aware that the IRS generally does not favor the use of independent contractors and takes a restrictive view of which individuals qualify as independent contractors versus employees. Further, employers who misclassify workers as independent contractors may be subject to back taxes, interest and penalties.

Campaigns should, therefore, be very careful to classify individuals as independent contractors only in those circumstances where the individual meets the criteria of an independent contractor under IRS guidelines. In this case, the campaign should also take steps to ensure that the individual's status is carefully documented, as, for example, with a specific contract setting forth the individual's independent contractor status, and with a letter related to hiring which sets out the duty of an independent contractor to pay all relevant taxes. Because of the sensitive nature of this issue, a campaign may wish to consult with counsel on whether an individual qualifies, and what steps to take in that case.

SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category.
 Detailed Summary
 Page

Page 1 of 12

For Line number 17.

Any info copied from Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full): The Delahunt For Congress Committee

Full Name, Mailing Address, Zipcode

A	William D. Delahunt 9 Ketch Lane Quincy MA 02171	Purpose auto rental, 1/96 & 2/96	Date 4/1/96	Amount this period: \$1,132.69
			Disbursement for:	

Full Name, Mailing Address, Zipcode

B	A. Joseph Gillis 290 Quarry Street Quincy MA 02169	Purpose consultant fee	Date 4/1/96	Amount this period: \$1,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

C	Thomas Ahern 16 Symphony Road Boston MA 02115	Purpose consultant fee	Date 4/1/96	Amount this period: \$2,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

D	Paul J. O'Sullivan 90 Quincy Shore Drive Quincy MA 02171	Purpose consultant fee	Date 4/1/96	Amount this period: \$4,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

E	Michael Shea 1205 Statler Office Building Boston MA 02116	Purpose consultant fee	Date 4/1/96	Amount this period: \$5,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

F	Malinda Howard 242 Waterman Street Providence RI 02906	Purpose consultant fee	Date 4/1/96	Amount this period: \$1,500.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

G	Jules Catering 508 Medford Street Somerville MA 02145	Purpose catering costs	Date 4/1/96	Amount this period: \$1,446.99
			Disbursement for:	

Full Name, Mailing Address, Zipcode

H	Gordon's Liquor Stores, Inc. 867 Main Street Waltham MA 02154	Purpose beverages	Date 4/2/96	Amount this period: \$311.54
			Disbursement for:	

SUBTOTAL of Disbursements This Page (optional)

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SCHEDULE B

EXPENSES

Use separate schedule(s) for each category
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Name of Committee (in Full): The Delahunt For Congress Committee

Full Name, Mailing Address, Zipcode

A	Data Trend, Inc. 1515 Washington Street Braintree MA 02184	Purpose computers	Date 4/4/96	Amount this period: \$3,985.80
			Disbursement for:	

Full Name, Mailing Address, Zipcode

B	Comp. USA 207 Market Street Brighton MA 02135	Purpose software programs	Date 4/4/96	Amount this period: \$619.45
			Disbursement for:	

Full Name, Mailing Address, Zipcode

C	Thomas Ahern 16 Symphony Road Boston MA 02115	Purpose reimbursment - computer program	Date 4/8/96	Amount this period: \$36.73
			Disbursement for:	

Full Name, Mailing Address, Zipcode

D	James W. Woodruff 23 Melrose Street Boston MA 02116	Purpose consultant fee	Date 4/1/96	Amount this period: \$2,250.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

E	First National Bank of Boston P.O. Box 1558 Providence RI 02901	Purpose rent	Date 4/8/96	Amount this period: \$500.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

F	Ben Franklin Press, Inc. 163 Robertson Street Quincy MA 02169	Purpose printed envelopes	Date 4/10/96	Amount this period: \$264.13
			Disbursement for:	

Full Name, Mailing Address, Zipcode

G	Nynex P.O. Box 1 Boston MA 02110	Purpose telephone expense	Date 4/10/96	Amount this period: \$1,119.13
			Disbursement for:	

Full Name, Mailing Address, Zipcode

H	Anthony's Fine Restaurants 1 Vinnin Square Swampscott MA 01907	Purpose catering costs	Date 4/10/96	Amount this period: \$5,684.96
			Disbursement for:	

SUBTOTAL of Disbursements This Page (optional)

97043820025

SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category
Detailed Summary
Page

Page 4 of 12

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Name of Committee (in Full): The Delahunt For Congress Committee

Full Name, Mailing Address, Zipcode

A	Malinda Howard 242 Waterman Street Providence RI 02906	Purpose consultant fee	Date 4/30/96	Amount this period: \$1,500.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

B	Malinda Howard 242 Waterman Street Providence RI 02906	Purpose airfare reimbursement	Date 4/30/96	Amount this period: \$391.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

C	Michael Shea 1205 Statler Office Building Boston MA 02116	Purpose consultant fee	Date 5/1/96	Amount this period: \$5,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

D	Paul J. O'Sullivan 90 Quincy Shore Drive Quincy MA 02171	Purpose consultant fee	Date 5/1/96	Amount this period: \$4,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

E	James W. Woodruff 23 Melrose Street Boston MA 02116	Purpose consultant fee	Date 5/1/96	Amount this period: \$2,250.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

F	Thomas Ahern 16 Symphony Road Boston MA 02115	Purpose consultant fee	Date 5/1/96	Amount this period: \$2,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

G	A. Joseph Gillis 290 Quarry Street Quincy MA 02169	Purpose consultant fee	Date 5/1/96	Amount this period: \$1,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

H	Malinda Howard 242 Waterman Street Providence RI 02906	Purpose commission	Date 5/2/96	Amount this period: \$1,700.00
			Disbursement for:	

SUBTOTAL of Disbursements This Page (optional)

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SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category
 Page Detailed Summary

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Name of Committee (in Full): The Delahunt For Congress Committee

Full Name, Mailing Address, Zipcode

A	Ben Franklin Press, Inc. 163 Robertson Street Quincy MA 02169	Purpose invitations, cards, envelopes	Date 5/25/96 Amount this period: \$594.30 Disbursement for:
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Full Name, Mailing Address, Zipcode

B	Nynex P.O. Box 1 Boston MA 02110	Purpose telephone expense	Date 5/25/96 Amount this period: \$114.25 Disbursement for:
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Full Name, Mailing Address, Zipcode

C	Nynex P.O. Box 1 Worcester MA 01608	Purpose telephone expense	Date 5/25/96 Amount this period: \$30.60 Disbursement for:
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Full Name, Mailing Address, Zipcode

D	A.T.&T. P.O. Box 371302 Pittsburgh PA 15250	Purpose telephone expense	Date 5/25/96 Amount this period: \$175.94 Disbursement for:
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Full Name, Mailing Address, Zipcode

E	Staples 757 Gallivan Boulevard Dorchester MA 02122	Purpose fax machine, paper	Date 5/27/96 Amount this period: \$627.02 Disbursement for:
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Full Name, Mailing Address, Zipcode

F	Amelia's Restaurant 305 Victory Road Quincy MA 02171	Purpose catering costs	Date 5/30/96 Amount this period: \$1,528.40 Disbursement for:
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Full Name, Mailing Address, Zipcode

G	Thomas Ahern 16 Symphony Road Boston MA 02115	Purpose consultant fee	Date 5/30/96 Amount this period: \$2,000.00 Disbursement for:
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Full Name, Mailing Address, Zipcode

H	Michael Shea 1205 Statler Office Building Boston MA 02116	Purpose consultant fee	Date 6/1/96 Amount this period: \$5,000.00 Disbursement for:
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SUBTOTAL of Disbursements This Page (optional)

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SCHEDULE B

MINIMIZED DISBURSEMENTS

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For Line number 17.

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Name of Committee (in Full): The Delahunt For Congress Committee

Full Name, Mailing Address, Zipcode

A	Paul J. O'Sullivan 90 Quincy Shore Drive Quincy MA 02171	Purpose consultant fee	Date 6/1/96	Amount this period: \$4,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

B	James W. Woodruff 23 Melrose Street Boston MA 02116	Purpose consultant fee	Date 6/1/96	Amount this period: \$2,250.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

C	Malinda Howard 242 Waterman Street Providence RI 02906	Purpose consultant fee	Date 6/1/96	Amount this period: \$1,500.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

D	A. Joseph Gillis 290 Quarry Street Quincy MA 02169	Purpose consultant fee	Date 6/1/96	Amount this period: \$1,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

E	Elizabeth Griffin P.O. Box 271 Scituate MA 02040	Purpose consultant fee	Date 6/1/96	Amount this period: \$3,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

F	Church Hill Consulting P.O. Box 8362 Boston MA 02114	Purpose consultant fee	Date 6/1/96	Amount this period: \$1,000.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

G	First National Bank of Boston P.O. Box 1558 Providence RI 02901	Purpose rent	Date 6/4/96	Amount this period: \$500.00
			Disbursement for:	

Full Name, Mailing Address, Zipcode

H	Ben Franklin Press, Inc. 163 Robertson Street Quincy Ma 02169	Purpose stickers, letterheads, invitations, flyers	Date 6/4/96	Amount this period: \$1,846.43
			Disbursement for:	

SUBTOTAL of Disbursements This Page (optional)

97043820028



FEDERAL ELECTION COMMISSION

Washington, DC 20463

July 30, 1996

Ian A. Bowles
PO Box 732
Woods Hole, MA 02543

Dear Mr. Bowles:

This is to acknowledge receipt on July 25, 1996, of your letter dated July 23, 1996. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

97043820029

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Delahunt for Congress
The Delahunt Committee

97043820030

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

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COMMISSION
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OGC

July 23, 1996

Ms. Lee Ann Elliott
Chair
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

MUR44 33

Dear Ms. Elliott:

I am writing to request that the Federal Election Commission investigate certain aspects of the campaign spending of William Delahunt, candidate for Congress in the Massachusetts 10th Congressional District. Mr. Delahunt is the Norfolk County District Attorney. He has run for re-election as D.A. unopposed since 1976.

There are two specific issues I would like the FEC to address. First, I am requesting an investigation into Mr. Delahunt's use of funds for his District Attorney campaign committee (hereafter "Delahunt D.A. Committee") for expenses for his federal Congressional campaign (hereafter "Delahunt Congressional Committee") -- an action prohibited by a January 1993 ruling by the FEC.

The second investigation I am requesting is of the Delahunt Congressional Committee's potentially improper classification of staff as "consultants" (independent contractors) rather than "employees". It appears likely that these members of Mr. Delahunt's staff do not meet strict IRS tests for being independent contractors. If Delahunt Congressional Committee staff have been improperly paid as independent contractors, there are significant tax implications.

I. Commingling of State and Federal Funds

A review of expenditures by the Delahunt D.A. Committee and the Delahunt Congressional Committee raises questions about commingling of campaign expenditures. Prior to January 1993, commingling of state and federal funds -- using state funds for a federal race -- was permissible. In January 1993, the Federal Election Commission changed its regulations to prohibit state campaign expenditures in Congressional races. This rule change took effect July 1, 1993, under Title 11, C.F.R., 110.3 (d), which states:

Under new FEC regulations, a candidate's authorized (federal) committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal election campaign. (This rule took effect July 1, 1993).

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In "Reports of Expenditures" filed with the Massachusetts Office of Political and Campaign Finance since December 1995, the Delahunt D.A. Committee has reported the following fees paid to Cosgrove, Eisenberg, & Kiley, totalling \$17,982.88.

Date	Payee	Purpose	Amount
12/26/95	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$8,375.00
1/17/96	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$1,457.50
2/28/96	Cosgrove, Eisenberg, & Kiley	"Legal Services"	\$1,437.50
4/08/96	Cosgrove, Eisenberg, & Kiley	"Legal Services (2/1/96-2/29/96)"	\$2,422.88
5/14/96	Cosgrove, Eisenberg, & Kiley	"Legal Services 3/1/96 to 4/25/96"	\$2,290.00
6/18/96	Cosgrove, Eisenberg, & Kiley	"Prof. Services through 5/31/96"	\$2,000.00
TOTAL			\$17,982.88

First, the data in this spreadsheet lead to the following conclusion: *the sudden jump in legal services paid from the Delahunt D.A. Committee fund raises questions about whether these expenditures were directed, in part or in whole, toward Mr. Delahunt's concurrent Congressional campaign.*

The questions raised here are bolstered by the fact that *Thomas Kiley, a partner in the firm Cosgrove, Eisenberg, & Kiley, is the Treasurer of the Delahunt for Congress Committee.* The Delahunt Congressional Committee does not appear to have ever paid for legal services to Mr. Kiley's firm, even though a review of Mr. Delahunt's state campaign shows that he has historically compensated his campaign treasurers for their work in his D.A. races. It is reasonable to conclude that Mr. Delahunt may be continuing his practice of compensating his campaign Treasurer, but from the improper pool of funds.

This conclusion is strengthened by the facts that (1) Mr. Kiley's firm was hired by the Delahunt D.A. Committee *after* he became a candidate for Congress, and (2) Mr. Delahunt maintains a different Treasurer for the Delahunt D.A. Committee account.

In addition, Mr. Delahunt has publicly announced his intentions possibly to step down from his D.A. seat if he does not win the Congressional seat. In the *Quincy Patriot-Ledger* on May 2, 1996, he is quoted as saying, "...he may step down before the end of his term as district attorney if he loses his bid for Congress." *The Cape Codder* reported on April 26, 1996, "[Delahunt] has said he will consider retiring if he doesn't win the seat ..." Therefore, it appears unlikely that Mr. Delahunt would need to spend funds on legal services for a D.A. campaign that is not occurring now and probably will not occur in the future.

In conclusion, Mr. Delahunt appears to have been using his DA campaign fund to support his Congressional campaign. If this is the case, the practice would both place Mr. Delahunt in an unfair position with regard to his competitors and would violate both the letter and spirit of FEC regulations. For the FEC's interest, please find enclosed a copy of an article from *The Boston*

Globe which raises additional questions regarding potential commingling of state and federal funds.

Please also find enclosed copies of the original campaign spending reports, with relevant expenditures highlighted.

II. Improper Classification of Staff as "Consultants" and Consequent IRS Questions

Mr. Delahunt has been paying Delahunt Congressional Committee staff as consultants, rather than salaried staff. In Mr. Delahunt's most recent FEC filing, of June 30, six staff members -- James W. Woodruff, A. Joseph Gillis, Thomas Ahern, Paul J. O'Sullivan, Michael Shea, Malinda Howard -- were being paid as "consultants" (or "independent contractors") rather than as "employees." The term "independent contractor" is a stringently defined classification by the IRS, including a number of criteria which it is unlikely the Delahunt Congressional Committee has met.

In a memorandum dated September 22, 1995, from Perkins Coie, a Washington, D.C. law firm specializing in election law that serves as a resource for Democratic Congressional campaigns, IRS Revenue Ruling 87-14, which regulates employer use of the independent contractor category, is described as follows:

... [T]he IRS generally does not favor the use of independent contractors and takes a restrictive view of which individuals qualify as independent contractors versus employees. Further, employees who misclassify workers as independent contractors may be subject to back taxes, interest and penalties ...

According to the memorandum, independent contractor status is subject to a set of strict guidelines, which it is reasonable to assume the Delahunt Congressional Committee has not met. These include:

- **Control.** "Independent contractors generally set their own hours and work from whatever location they choose."
- **Full Time Required vs. Services for Other Persons.** "An independent contractor is generally free to work when and for whom he or she chooses If the worker is required to devote substantially full time to the business of the person for whom the services are performed, or such person has control over the amount of time the worker spends working and can restrict the worker from doing work for other entities [this] would again, indicate an employer-employee relationship."
- **Payment Schedule.** "Payment to an independent contractor should be by the job, although periodic payments may be made as a convenient way of paying a lump sum agreed upon as the cost of a job. Payment by the hour, week or month generally indicates an employer-employee relationship."

Following is a table of paid staff reported by the Delahunt Congressional Committee as "consultants" in its June 30, 1996 FEC filing:

Date	Payee	Purpose	Amount
4/1/96	James W. Woodruff	"Consultant fee"	\$2,250
4/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
4/1/96	Thomas Ahern	"Consultant fee"	\$2,000
4/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
4/1/96	Michael Shea	"Consultant fee"	\$5,000
4/1/96	Malinda Howard	"Consultant fee"	\$1,500
5/1/96	Michael Shea	"Consultant fee"	\$5,000
5/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
5/1/96	James W. Woodruff	"Consultant fee"	\$2,250
5/1/96	Thomas Ahern	"Consultant fee"	\$2,000
5/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
5/30/96	Thomas Ahern	"Consultant fee"	\$2,000
6/1/96	Michael Shea	"Consultant fee"	\$5,000
6/1/96	Paul J. O'Sullivan	"Consultant fee"	\$4,000
6/1/96	James W. Woodruff	"Consultant fee"	\$2,250
6/1/96	Malinda Howard	"Consultant fee"	\$1,500
6/1/96	A. Joseph Gillis	"Consultant fee"	\$1,000
6/1/96	Elizabeth Griffin	"Consultant fee"	\$3,000
TOTAL			\$50,250

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Unless the Delahunt for Congress Committee has met the many stringent criteria for describing and paying its staff as consultants -- which is unlikely in several instances, particularly in the case of Paul J. O'Sullivan, Mr. Delahunt's Congressional Campaign Manager -- it is reasonable to conclude that the Delahunt for Congress Committee may be avoiding the payment of Social Security, Medicare, unemployment, and other taxes as well as various other expenditures associated with "employee" rather than "independent contractors" payments. The memorandum concludes:

Campaigns should, therefore, be very careful to classify individuals as independent contractors only in those circumstances where the individual meets the criteria of an independent contractor under IRS guidelines. In this case, the campaign should also take steps to ensure that the individual's status is carefully documented, as, for example, with a specific contract setting forth the individual's independent contractor status, and with a letter related to hiring which sets out the duty of an independent contractor to pay all relevant taxes.

Based on these descriptions of the criteria for paying staff as employees rather than independent contractors, we ask the following questions:

1. Has the Delahunt Congressional Committee signed the aforementioned specific contracts with the six staff listed above, documenting their status as "consultants

(independent contractors)" rather than "employees" in accordance with IRS regulations?

2. Has the Delahunt Congressional Committee provided the aforementioned letters related to hiring that set out the six staff members' duty to pay all relevant taxes?
3. Have the relevant taxes been paid, either by the Delahunt Congressional Committee or the six staff members?

Please find enclosed copies of the original campaign spending reports, with relevant expenditures highlighted, as well as a copy of the Perkins Coie memorandum.

* * *

It is my belief that Mr. Delahunt may be gaining a significant and unfair advantage over his opponents through improper patterns of campaign spending in two areas: from the Delahunt D.A. Committee to the Delahunt Congressional Committee -- prohibited by the Federal Election Commission -- and by paying staff as consultants rather than employees from Delahunt Congressional Committee funds -- prohibited by the Internal Revenue Service. Such patterns indicate a potential lack of regard for strict federal regulations intended to provide a level playing field for all candidates in a Congressional race.

Thank you very much for your attention to these two requests for investigation. Please do not hesitate to contact me or my campaign manager, Michael Signer, at (508) 457-4146, should you or your staff have any questions related to this matter. I look forward to a response at your earliest convenience.

Sincerely,

Ian A. Bowles

Ian A. Bowles

*Subscribed & sworn to
before me on this 5th day
of August, 1996
Margaret J. Ingham
My Commission expires
May 24, 2002*



FEDERAL ELECTION COMMISSION

Washington, DC 20463

August 12, 1996

Ian A. Bowles
P.O. Box 732
Woods Hold, MA 02543

RE: MUR 4433

Dear Mr. Bowles:

This letter acknowledges receipt on August 7, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4433. Please refer to this number in all future communications. 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 "Colleen T. Sealander", is written over a horizontal line.

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

97043820036



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1996

Thomas R. Kiley, Treasurer
Delahunt for Congress Committee
500 Victory Road
Quincy, MA 02171

RE: MUR 4433

Dear Mr. Kiley:

The Federal Election Commission received a complaint which indicates that the Delahunt for Congress Committee ("Committee") and you, as treasurer, 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 4433. Please refer to this number in all future correspondence.

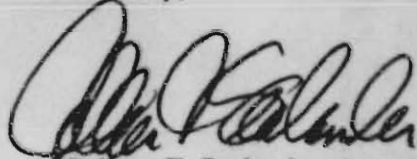
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements 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.

97043820037

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

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

cc: William D. Delahunt

97043820038



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 12, 1996

James Ricciuti, Treasurer
The Delahunt Committee
54 Broad Reach, #204A
North Weymouth, MA 02191

RE: MUR 4433

Dear Mr. Ricciuti:

The Federal Election Commission received a complaint which indicates that The Delahunt Committee ("Committee") and you, as treasurer, 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 4433. Please refer to this number in all future correspondence.

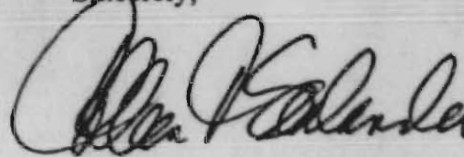
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements 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.

97043820039

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

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

9704382004C

COSGROVE, EISENBERG AND KILEY, P.C.
COUNSELORS AT LAW

MARTIN S. COSGROVE
LEWIS C. EISENBERG
THOMAS R. KILEY
PETER M. McELROY
CARL VALVO

PAUL R. MATTHEWS
PETER P. HARRINGTON, JR.
SUZANNE B. MATTHEWS
STEVEN H. GOLDBERG
MATTHEW L. SCHEMME
MARTHA E. KRACHE
WILLIAM J. CINTOLO
THOMAS B. DROHAN

August 27, 1996

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4433

Dear Sirs:

97043820041
This is a response to the complaint of Ian A. Bowles, one of three candidates for the Democratic nomination for Congressman from the 10th Massachusetts district. His complaint is filed against the leading candidate for that nomination, William Delahunt, who is the incumbent District Attorney for the Norfolk District and as such remains a "candidate" under Massachusetts campaign finance laws. G.L. c. 55, §1. The complaint is also directed at me personally, both in the sense that I am the Treasurer of the Delahunt for Congress Committee and in the sense that it attacks the propriety of legal fees paid to my firm for my legal services to the political committee organized for Mr. Delahunt at the state level. I respond for myself and the Committee for the purpose of demonstrating in writing that no action should be taken in this matter. I also respond for James Ricciuti, Treasurer of the Delahunt Committee organized pursuant to G.L. c. 55, §5. For the reasons which follow, the Commission should promptly vote not to proceed with this matter so that Mr. Bowles' transparent misuse of the FEC process will not taint the September primary.

- I. There has been no commingling of state and federal campaign funds.

In the complaint he misfiled on July 23rd and refiled in August, Bowles misconstrues 11 C.F.R. §110.3(d), perhaps in part because he quotes a description of the regulation rather than the regulation itself. The full text of the regulation reads:

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COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 29 1 13 PM '96

(d) Transfers from nonfederal to federal campaigns.

Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited.

However, at the option of the nonfederal committee, the nonfederal committee may refund contributions, and may coordinate arrangements with the candidate's principal campaign committee or other authorized committee for a solicitation by such committee(s) to the same contributors. The full cost of this solicitation shall be paid by the Federal committee.

Bowles' complaint does not relate to the transfer of funds or assets at all. For that reason, further investigation is not warranted.

Further investigation is also not warranted because Bowles really alleges that state campaign funds have not been properly expended. With all due respect, such an allegation is within the jurisdiction of the Massachusetts Office of Campaign and Political Finance, not the Federal Election Commission, and I earnestly invite you to communicate with that office on the subject matter of Bowles' allegations concerning payments to me. General Counsel Peter Sturges is probably the most appropriate contact there. His phone number is (617) 727-8352. Here is what I think you will learn:

1. I have an extensive Massachusetts campaign finance practice. One reason for that is that I was the first Chief of the Elections Division in the Department of the Attorney General and was actively involved in the implementation and enforcement of the state campaign finance law from 1975 to 1987.
2. From 1987 to the present, there has never been a Massachusetts election cycle in which I failed to serve one or more Massachusetts political committees in the capacity as a paid counsel.
3. I have served as Treasurer of three such duly organized campaign committees. In each instance I have assumed the responsibilities as Treasurer, I have not been compensated in that capacity.

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4. My paid service as counsel to the political committee organized at the state level on behalf of William Delahunt began in the 80's. The payments to my firm by that state committee this year are not in any way inconsistent with monies paid to me in the past by that committee or others whom I have represented. Political committees' expenditures for legal fees are routinely audited by OCPF and in every instance involving this firm, routinely cleared. That includes situations where I have had to allocate time between entities on a good faith basis because while some legal activities I undertook for candidates had to be billed to a candidate's committee and reported, others were personal matters which could not lawfully be charged to a state political committee.
5. There was a great amount of legal activity involving the Delahunt state committee in 1995. That activity was widely reported in the Massachusetts public media and was initiated in part by OCPF and in larger part by that public media. I represented the Committee in connection with an audit of its expenditures and then in connection with three separate efforts by media organizations to second-guess the Office of Campaign and Finance Director's conclusions that all of the District Attorney's expenditures were proper. I briefed public records issues in each instance and in each instance prevailed. I also submitted multiple opinion requests to OCPF, each supported by extensive research and briefing. Fall out from each of those activities continues to this day -- including communicating with OCPF concerning Bowles' complaints about its prior audit. Ironically, one of the opinion requests drafted (but not previously submitted) related directly to state law provisions permitting transfers of state funds to federal committees but prohibiting coordinated refunds of the type contemplated by 11 CFR §110.3(d). The effect of the anticipated opinion would have been to result in a system of refunds that would have resulted in commingling. With this letter, I submit the companion draft document requesting the FEC's opinion on the subject and request your advice on the matter. (Attachment 1).

Although OCPF won't state the obvious, I will. No matter how poor a candidate's research skills might be, no one running against Bill Delahunt in 1996 can pretend to be ignorant of the extent of the state committee activity or my involvement in it during 1995. It is ludicrous for Bowles to allege as fact that my firm was hired

by the Delahunt D.A. Committee after he became a candidate for Congress. Indeed that statement of fact is even contradicted in the article he attaches! In any other context but an election, I would ask that a government agent receiving such an obviously false statement consider referring the matter to the United States Attorney.

As to myself, I represent under oath as follows:

1. Beginning in December, 1995 I have allocated my in-office time on contemporaneous "billing" records, attributing all of my activities in connection with the federal campaign to the Delahunt for Congress Committee rather than the state committee organized on his behalf.
2. Each billing period since December, 1995, I have submitted two bills to the Committees organized on behalf of William Delahunt. Time I have contemporaneously allocated to the state committee is billed to it and has been paid. Time I allocate to the federal committee is transmitted to it, but "billed" to the federal committee for paper trail purposes only. Consistently with my state practice, I do not seek payment from the committee or candidate whom I support for my services as its Treasurer. I believe that to be my right under 11 CFR §100.7(b)(13) (Please do not blame me for the miscitation in the Globe article appended to Bowles' complaint. But if you disagree with my legal position, I'll take the money rather than exercise my first Amendment freedom).
3. The decision to create the clear paper trail was made by the Candidate, who wanted to avoid the kind of ill-conceived attacks made by Mr. Bowles. That the State committee paid for all prior legal work in December speaks to that decision. There has been no sudden unexplained jump in legal services provided, billed for or paid.

The jurat at the end of this submission relates to the three foregoing paragraphs.

Candidate Bowles is as cavalier about both factual matters and the conclusions drawn from those "facts" as he was about swearing to his complaint. On page 2, for instance, he purports to summarize fees for legal services paid to my firm Cosgrove, Eisenberg and Kiley, P.C. as payee. The chart he submits never includes the label "P.C." which means "Professional Corporation" when used by Massachusetts law firms. The "Report(s) of Expenditures" he attached to his complaint correctly reflect the

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"P.C." on four of the six statements. Why is it omitted in the Bowles' complaint? Is it to suggest that the firm is a partnership and I a "partner", a Bowles mischaracterization somehow thought to warrant emphasis through italics?

Does his erroneous conclusion that there has been improper pooling of funds really get strengthened by the observation "Mr. Delahunt maintains a different Treasurer for the Delahunt D.A. Committee account?" Separate accounts, separate Treasurers and separate billing do not add up to "commingling", which is defined as "mixing" or "blending" in my Webster's Collegiate Dictionary. The only occasions when the complete separation between the two committees breaks down are instances like this, when persons with a personal or institutional interest in the federal campaign raise questions about the state committee requiring responses from it. This response, for instance, is a consolidated one filed in part for James Ricciuti. His Statement of Designation of Counsel is enclosed (Attachment 2). Mr. Ricciuti has been invited to make such a submission by the FEC and has the right articulated by the Commission to do so through counsel. Counsel has a right to be paid for the effort. If I choose to allocate some portion of the preparation time involved with this response to the state committee, no federal laws are implicated. The blurring of lines about which Bowles complains to the FEC is thus occasioned by actions of others, not insensitivity on the part of the two separate Delahunt committees. In any event, the arguments advanced in part I are offered for both committees. The Delahunt state committee need not and does not join in the following response in part II, which has nothing to do with it.

II. The characterization of payments as "consulting fees" raises no issues cognizable by the Commission and was suggested by Commission staff.

The second prong of the would-be Congressman's complaint has even less connection to the law administered by the FEC than the first. It is no exaggeration to suggest Bowles' complaint is based on our alleged inattention to a memorandum from "Perkins Coie, a Washington D.C. law firm specializing in election law that serves as a resource for Democratic Congressional campaigns" and its discussion of an IRS revenue ruling. One full page of Bowles' complaint is devoted to a discussion of the memorandum, while another half a page lists the occasions on which our June 30 report used the words "consultant fee" to describe the purpose of an expenditure. Much hangs on our use of the word "consultant" in the Bowles formulation of things, but it will not bear the weight.

97043820046

First, "consultant fee" is not the formulation the Committee originally used to described those payments. In our first report we simply used the word "fee". That prompted a letter from Senior Reports Analyst Sheppard from the FEC's Reports Analysis Division inviting telephone contact, which I promptly initiated. Ms. Sheppard was on leave and my call to her was directed to Todd (Shewmaker?). Our discussion, resulting in the agreement that "consulting fee" was the right designation, was summarized in my letter to Ms. Sheppard dated June 3rd, a copy of which is enclosed. (Attachment 3). I suggest that what the Commission staff agreed was proper at the beginning of the month could not somehow have become unlawful by the time we submitted our June 30 report.

Second, if Bowles saw the correspondence between Ms. Sheppard and me, he bowdlerized it in his complaint to the Commission. My letter states explicitly that "those fees were payments to staffers with whom the Committee has contracted for consulting services that would be regularly recurring." Bowles, however, ignores the statement and asks the Commission to inquire "Has the Delahunt Congressional Committee signed the aforementioned (in the Perkins Coie memorandum) specific contracts with the six staff listed above documenting their status as consultants (independent contractors)" rather than "employees" in accordance with IRS regulations?

While the short answer to that question would be "yes", the better response is "what if we didn't?" The serious accusations made by Bowles relate to "avoiding the payment of Social Security, Medicare, unemployment and other taxes..." not to any violation of any statute or regulation over which the FEC has jurisdiction. Thus the second prong of Bowles' complaint must be summarily dismissed because it raises no contentions of law coming within the ambit of the FEC.

For all these reasons, the FEC should determine no reasonable cause exists and decline to investigate further the complaint of Ian Bowles.

It should, however, respond to the request for opinion
appended hereto as Attachment 1.

Thomas R. Kiley

Thomas R. Kiley, As Treasurer of the
Delahunt for Congress Committee

and as Counsel for James Ricciuti,
Treasurer of the Delahunt (State)
Committee

I, Thomas R. Kiley, verify under oath the factual statements
made in part I, paragraphs 1-3 on pages 3-end of this submission.

Thomas R. Kiley

Thomas R. Kiley

Then personally appeared before me the above-named Thomas R.
Kiley and subscribed to this response and swore to the facts as set
forth in the above verification.

Elizabeth A. Pylipinski
Notary Public
My Commission Expires: 8/19/99

~~DRAFT~~ TK

August 27, 1996

~~December 11, 1995~~

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for Advisory Opinion Concerning the Application
of 11 CFR 110.3(d)

Dear Commissioners:

97043820048
This is a request for an Advisory Opinion made pursuant to 2 USC 437f(a)(1) and 11 CFR 112.1. It is made on behalf of a candidate for Congress, William D. Delahunt, and the duly organized committee organized on his behalf, The Delahunt for Congress Committee (FED identification number C00268938). It concerns the application of 11 CFR 110.3(d) and its rule prohibiting transfers of nonfederal political funds to federal campaigns but permitting coordinated refund/solicitation campaigns. The question is presented because of a potential conflict between that regulation and a regulation adopted by the Office of Campaign and Political Finance in Massachusetts, ("OCPF") which in essence permits transfers but restricts refunds. 970 CMR 1.04(9).¹ The request

¹ The cited regulation provides:

(9) A political committee or candidate may elect to refund a contribution, subsequent to its deposit, under the following circumstances:

(a) The political committee or candidate determines that the receipt of the particular contribution creates an appearance of a conflict of interest or other possible impropriety. This would apply where the candidate or political committee has a genuine belief that the receipt of a particular contribution creates an impression that a person can improperly influence or unduly enjoy official favor, or exercise any undue influence.

(b) The political committee or candidate has established, or establishes a refund policy regarding contributions from a particular category or type of contributor. This policy, and the refund of such contributions,

9704382049

does not ask you to opine on the meaning of state law; a similar request for an advisory opinion is being transmitted to the state Director of the Office of Campaign and Political Finance. Nor does it seek to cause you to assert that the federal regulation pre-empts or reigns supreme over the state law. Since both regulations serve the purpose of enhancing the speech component of political contributions by fostering individual choice, it is our belief the two regulations can be reconciled. We present you not with a hypothetical question but with a description of specific transactions or activities we intend to pursue and ask you to advise whether the process we describe meets the requirements of federal law.

The state Delahunt Committee proposes to "refund" contributions, contemporaneously coordinating a solicitation of those named as one of the payees on a refund check, both as contemplated by the federal regulation. We will "refund" first to those who made contributions in 1995, then in 1994 and so on until the process is complete. The process will begin with the transmittal of a letter like the enclosed, accompanied by a check made payable to the donor(s) and the Delahunt for Congress Committee. Those who elect to accept the refund and contribute to the federal committee will endorse the check and remit it to the federal committee. The Delahunt for Congress Committee will deposit the checks so endorsed in its federal account, provided all required personal information is supplied. Those who elect not to contribute to the federal committee will, subject to the approval of the OCPF, return the check to the state committee for endorsement and subsequent return to the state donor.

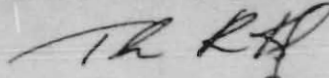
The Committee believes that the above described process meets the letter of both the federal and state statutory schemes, but we also recognize that you and OCPF may disagree and propose alterations to the proposed process. Accordingly I request not just your prompt opinion on this matter, but a "real time" meeting to discuss alternatives that will satisfy both regulatory regimes

must be stated and applied in an open and consistent manner. This division shall not be construed to permit the refund of contributions due solely to the termination of a particular candidacy.

(c) This section shall not be construed to affect the requirements of M.G.L. c. 55, and these regulations, relative to the disposition of residual funds.

that the conflicting letter but shared spirit of the two regulatory systems are fulfilled. The sooner such a meeting can occur, the better.

Very truly yours,



Thomas R. Kiley, *Treasurer*

Delahunt for Congress Committee

TRK:dn

Enclosure

97043820050

~~DRAFT~~

August 27, 1996

December , 1995

Honorable Michael J. Sullivan
Director
Office of Campaign and Political Finance
One Ashburton Place
Boston, MA 02108

Dear Director Sullivan:

This is a request for an advisory opinion made pursuant to M.G.L. c. 55, §3. It is made on behalf of District Attorney William D. Delahunt and the Committee duly organized on his behalf under M.G.L. c. 55, §5. It concerns the application of the second paragraph of M.G.L. c. 55, §6, which remained unchanged by Mass. St. 1994, c. 43 and Mass. St. 1995, c. 80. That paragraph permits such duly organized committees to pay or expend money "for the enhancement of the political future of the candidate." Mr. Delahunt intends to run for Congress to fill the seat being vacated by Congressman Gerry Studds, and he and the Committee have determined that expenditures to enhance that candidacy will enhance Mr. Delahunt's political future.

The question arises because of a potential conflict between federal law, which occupies the field regulating campaign finance activities by candidates for Congress, 2 USC §§ 431, et seq. and the state statutory and regulatory scheme which applies to the state committee. Specifically it relates to the interplay between a federal regulation, 11 CFR 110.3(d),¹ which essentially prohibits

¹ The federal regulation provides:

Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. However, at the option of the nonfederal committee, the nonfederal committee may refund contributions, and may coordinate arrangements with the candidate's principal campaign committee or other authorized committee for a solicitation by such committee(s) to the same contributors. The full cost of this solicitation shall be paid by the Federal committee.

transfers of non-federal political funds to federal campaign committees but permits coordinated refunds and solicitations on the one hand, and a state regulation adopted by your office dealing with refunds, on the other. 970 CMR 1.04(9).

This request does not ask you to opine on the meaning of federal law; a similar request for an Advisory Opinion is being transmitted to the Federal Elections Commission. That request lays out the process the respective federal and state committees contemplate following in much the same terms that follow. It also requests a "real time" meeting as soon as possible to discuss modifications, if any, necessary to comply with the letter of the federal law. I respectfully ask for the same type of meeting immediately thereafter with you. It is our firm belief that the process we propose meets the twin shared state and federal goals first of enhancing the speech component of political contributions by fostering individual choice, and second by ensuring that the funds flowing into and out of campaigns are "clean." The meetings we suggest will allow us to tinker with our proposal to meet the letter of the laws, provided the basic proposal does, as we perceive, meet their spirit.

First, I should make it clear that it is not our intent to disband the duly organized state committee, thus triggering "residual fund" concerns. The committee instead contemplates making expenditures or transfers of funds to enhance Mr. Delahunt's political future. The transfers may nominally be labeled "refunds" to meet the requirements of federal law, but control over the funds enabling them to be used for purposes other than enhancing Mr. Delahunt's political future will not be transferred without your approval. Second, I should underscore the fact that if you deem these payments, expenditures or transfers to be "refunds" within the meaning of 970 CMR 1.04(9), then you may regard the process which is described below as a refund policy established under subparagraph (b) thereof, which we will apply in an open and consistent manner.

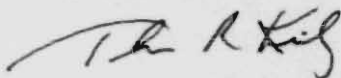
The state Delahunt Committee proposes to transfer or expend monies it holds from itself to the federal committee organized on Mr. Delahunt's behalf by transmitting a letter like the enclosed, first to our 1995 donors, then to our 1994 donors and so on until the process is complete. The letter will be accompanied by a check made payable to the donor(s) and the Delahunt for Congress Committee. Those who elect to transfer or designate the funds reflected in the check as a contribution to the federal committee will endorse the check and remit it to the federal committee. The committee will deposit the checks so endorsed in its federal account, provided all required personal information is supplied. Those who elect not to contribute to the federal committee will either return the check to the state committee for endorsement and subsequent return to the state donor, subject to the approval of

97043820052

OCPPF or cause the funds to remain in the duly organized state committee to be used for the purposes contemplated by M.G.L. c. 55, §6. Thus Mr. Delahunt's state candidate status would not be terminated and the disposition of residual funds would not be affected.

I ask your advice concerning the above described process which I respectfully submit eliminates the "Catch 22" combined effect of the federal and state regulations. As you know, I am one of the District Attorney's most ardent supporters. My support takes the form not only of advocacy but also of financial contributions. Nevertheless, I have historically supported numerous other state and federal candidates and I want the right to pick amongst my favored candidates when they choose to run against one another. Other rumored candidates for the 10th District seat, men like Mayor James Sheets or former Senator Paul Harold, have had access to my head, my heart and my wallet. The process described above allows people such as I to choose whom we support and, with all due respect, is therefore superior to flat rules of prohibition or permission. It deserves your approval and I urge your prompt and favorable consideration. May I call to arrange a meeting?

Very truly yours,



Thomas R. Kiley, Counsel
Delahunt Committee

TRK:dn

Enclosure

97043820053

DRAFT

Dear :

There is a "Catch 22" situation involving federal and state campaign finance laws that affects my federal candidacy. There is, however, a possible resolution of the issue which you can help me achieve.

First the problem: due to your generous support of my re-election efforts, I have a balance in my state campaign account. Logic suggests that I use those funds to support my campaign for Congress before I ask you to dig deep into your pockets once again. State campaign finance regulations basically prohibit me from refunding the money to you, but also appear to permit me to transfer the monies you have previously contributed to the federal committee. The federal regulations do not permit such a transfer, but do permit refunds. That's why I call it "Catch 22." The rationale for the federal regulation is that monetary contributions are First Amendment protected free speech; none of us in public life should presume that your support for our candidacy in one election necessarily means you support us for a different office the next time around. We're supposed to earn your support each campaign and I hope I've done that. If I have, there may be a solution to this "Catch 22."

The federal regulation barring "transfers" contains the following language: "However, at the option of the non-federal committee, the non-federal committee may refund contributions, and may coordinate arrangements with the candidate's principal campaign committee or other authorized committee for a solicitation by such committee(s) to the same contributors." I propose to satisfy the state's "transfer but not refund" rule and the United States' "refund but not transfer" rule by merging the two. I can do so only with your cooperation and approval from the Federal Elections Commission and the State Office of Campaign and Political Finance.

Enclosed is a check made payable to you and the Delahunt for Congress Committee. It "refunds" the money you contributed to my state committee in 199_. If you wish to designate or "transfer" that amount to my federal committee, please complete the attached "YES" form, endorse the check and return it in the enclosed self-addressed envelope.

If you do not wish to support my federal campaign in this way, please fill out the "NO" form, return the check without endorsement and I will endorse it back to you, if permitted to do so by the state Office of Campaign and Political Finance.

Very truly yours,

William D. Delahunt

Enclosure

97043820054

YES

Yes. Please refund my contribution to the Delahunt for District Attorney Committee and transfer the proceeds to the Delahunt for Congress Committee in my name. Please allocate it to the primary election, if possible and allocate any excess to the general election.

Name
Address
Home Phone

Occupation

Employer

97043820055

NO

No. I do not want my contribution to the Delahunt for District Attorney Committee to be transferred to the Congressional Campaign. I understand the funds may have to be paid over to the State Treasury - Local Aid Fund or other disposition made of them but request a refund, if the Office of Campaign and Political Finance will permit it.

Name
Address
Home Phone

Occupation

Employer

97043820056

STATEMENT OF DESIGNATION OF COUNSELMUR 4433NAME OF COUNSEL: Thomas R. KileyFIRM: Cosgrove, Eisenberg and Kiley, P.C.ADDRESS: One International PlaceSuite 1820Boston, MA 02110-2600TELEPHONE: (617) 439-7775FAX: (617) 330-8774

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.

8/22/96
DateJames Piccinini
Signature

RESPONDENT'S NAME: _____

ADDRESS: _____

TELEPHONE: HOME(_____) _____

BUSINESS(_____) _____

97043820057

COSGROVE, EISENBERG AND KILEY, P.C.
COUNSELORS AT LAW

MARTIN S. COSGROVE
LEWIS C. EISENBERG
THOMAS R. KILEY
PETER M. McElroy
CARL VALVO

PAUL R. MATTHEWS
PETER P. HARRINGTON, JR.
SUZANNE B. MATTHEWS
STEVEN H. GOLDBERG
MATTHEW L. SCHEMME
MARTHA E. KRACHE
WILLIAM J. CINTOLO

June 3, 1996

Ms. Pat Sheppard
Reports Analysis Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: The Delahunt for Congress Committee
No. COO 268938

Dear Ms. Sheppard:

This is in response to your letter dated May 21, 1996, which raised questions concerning information contained in the April Quarterly Report (1/1/96 - 3/31/96). My response to your itemization is as follows:

- The contribution from A. Raymond Tye, reported on Schedule A of Itemized Receipts, lettered E. Page 26 and the contribution from Stephen R. Weiner, reported on Schedule A of Itemized Receipts, letter E. Page 27, both should have been reported as Receipts for the General election. Both were incorrectly reported as Receipts for the Primary election, due to typographical errors. Enclosed are copies of redesignation or reallocation letters from the respective donors, but they are really confirming our prior understanding these were contributions for the General election that the Committee improperly labeled on the report.

Please note that we are following up on your suggestion that we review all contributions for excessives that may have been caused by the same type of programming or typographical error. As to any instances of "excessives" reflected on the referenced report, that we might uncover, should I refund, redesignate or reallocate notwithstanding the passage of sixty days from receipt? Your underscoring of the sixty day requirement gives me pause, since the timing of your suggestion (May 21) and the period covered by the report (January 1 through March 31) make meeting the sixty day provision a virtual impossibility.

- On May 30th I spoke with Todd (Shewmaker?) in your absence. I described the actual reason for expenditures where you have determined "fee" is an insufficient brief statement to describe "purpose." I told him these fees were payments to staffers with whom the Committee has contracted for consulting services that would be regularly recurring. They are not salaries because the consultants are not employees. We agreed that "consulting fee" was the right designation. Thus, where the purpose of description of a disbursement was listed as "fee," they all were for a "consulting fee."

If you need further information or clarification, please contact me.

Thank you.

Very truly yours,


Thomas R. Kiley

TRK:dn

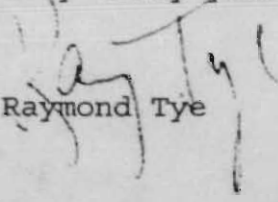
97043820059

One United Way
East Bridgewater, MA 02379
May 30, 1996

Dear Mr. Kiley:

My contribution of March 22, 1996 to the Delahunt for Congress Committee has been misdesignated or misallocated. That contribution of \$500 should be redesignated or reallocated to the general election in November, 1996, not the primary.

Very truly yours,


Raymond Tye

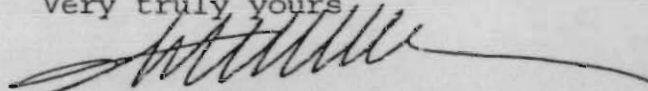
9704382006C

1330 Boylston Street
Chestnut Hill, MA 02167
May 30, 1996

Dear Mr. Kiley:

My contribution of March 25, 1996 to the Delahunt for Congress Committee has been misdesignated or misallocated. That contribution of \$500 should be redesignated or reallocated to the general election in November, 1996, not the primary.

Very truly yours



Stephen R. Weiner

97043820061

COSGROVE, EISENBERG AND KILEY, P.C.
COUNSELORS AT LAW

MARTIN S. COSGROVE
LEWIS C. EISENBERG
THOMAS R. KILEY
PETER M. McELROY
CARL VALVO

PAUL R. MATTHEWS
PETER P. HARRINGTON, JR.
SUZANNE B. MATTHEWS
STEVEN H. GOLDBERG
MATTHEW L. SCHEMME
MARTHA E. KRACHE
WILLIAM J. CINTOLO
THOMAS B. DROHAN

August 27, 1996

General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

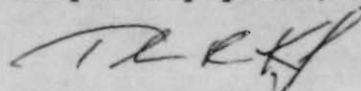
Dear Sirs:

I appended the enclosed opinion request to a response letter submitted today in MUR 4433. I am also transmitting it under separate cover to comply with 11 CFR §112.1(e).

While the Committee decided in December not to submit the request because we did not want to create a phony "commingling" campaign issue, the phony commingling campaign issue has been created by Candidate Bowles. Since we have the down-side, we might as well have the up. Accordingly, I am now submitting my previously drafted request to you for a formal opinion.

The only situation which has changed between December and August is that I no longer request a meeting with you as I would have last December. I know the available time has shrunk and that you may not be able to answer me formally before the primary or election. It also may be that if I secure your respective blessings, I will not have time to implement them before the election. I do not want to create the impression of urgency a request for a meeting might convey.

Very truly yours,


Thomas R. Kiley

TRK:dn

Enclosures

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Aug 29 1 23 PM '96

97043820062

RECEIVED
2-19-97

IAN A. BOWLES
P.O. Box 732
WOODS HOLE, MA 02543
(508) 548-4630

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
FEB 19 11 37 AM '97

February 12, 1997

Ms. Lee Ann Elliot
Chair
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

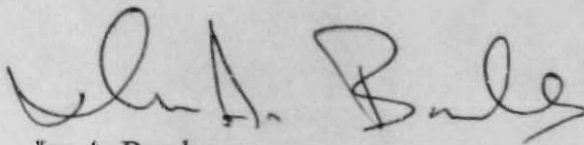
Ref. Complaint # MUR4433

Dear Ms. Elliot:

I am writing to request that the Federal Election Commission withdraw complaint MUR4433, which I filed on July 23, 1996.

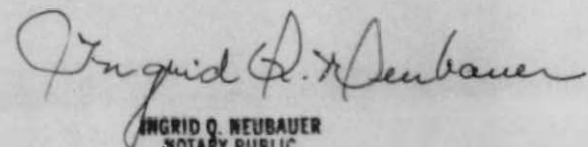
Should you have any questions related to this request, please do not hesitate to have your staff contact me at (508) 548-4630.

Sincerely,



Ian A. Bowles

Sworn (affirmed) to and signed before me this 14th day of FEBRUARY,
1997.



INGRID Q. NEUBAUER
NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMM. EXPIRES: JULY 14, 2000

97043820063



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 20, 1997

Ian A. Bowles
P.O. Box 732
Woods Hole, MA 02543

RE: MUR 4433

Dear Mr. Bowles:

This is in reference to your letter dated February 12, 1997, requesting that the complaint you filed against Delahunt for Congress be withdrawn.

Under 2 U.S.C. § 437g, the Federal Election Commission is empowered to review a complaint properly filed with it and to take action which it deems appropriate under the Federal Election Campaign Act of 1971, as amended ("the Act"). A request for withdrawal of a complaint will not prevent the Commission from taking appropriate action under the Act. Your request will become part of the public record within 30 days after the entire file is closed.

If you have any further questions about this procedure, please contact Jennifer Henry at (202) 219-3400.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

97043820064

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 6 2 45 PM '97

In the Matter of

)
)
)
)

ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT

SENSITIVE

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 28 cases which do

97043820065

not warrant further action relative to other pending matters.¹ Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

97043820066

¹ These cases are: MUR 4419 (*Weinzapfel for Congress*); MUR 4423 (*Davis for Congress*); MUR 4424 (*Nevadans for "Spike" Wilson*); MUR 4429 (*Delahunt for Congress*); MUR 4430 (*Jean Leising for Congress*); MUR 4431 (*Engel for Congress*); MUR 4433 (*Delahunt for Congress*); MUR 4437 (*DiNicola for Congress Committee*); MUR 4440 (*Sue Kelly for Congress*); MUR 4450 (*National Treasury Employees*); MUR 4452 (*Mid-Suffolk N.O.W.*); MUR 4455 (*City of Milwaukee*); MUR 4456 (*Jackson Mint Ltd.*); MUR 4457 (*U.S. Department of Health and Human Services*); MUR 4458 (*KMA-AM Radio*); MUR 4461 (*Americans For Freedom Of Choice PAC*); MUR 4462 (*Ellen O. Tauscher*); MUR 4464 (*Norwood for Congress*); MUR 4465 (*Lincoln for Congress*); MUR 4469 (*Moseley-Ebraun for Senate*); MUR 4475 (*Manpower Temporary Services, Inc.*); MUR 4479 (*Owens for Congress Committee*); MUR 4482 (*Mike McCormack for Congress*); MUR 4487 (*Citizens for A Strong America*); MUR 4488 (*Ortiz for Congress*); MUR 4489 (*Gill for Congress*); MUR Pre-MUR 338 (*Richard Chrysler Inc.*); and Pre-MUR 339 (*Mammel & Associates, Inc.*).

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective May 19, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

97043820067

III. RECOMMENDATIONS.

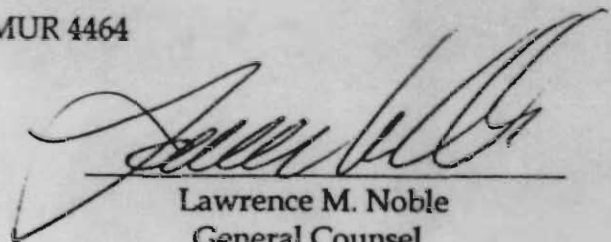
A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

- 1. Pre-MUR 338
- 2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

- | | | |
|-------------|--------------|--------------|
| 1. MUR 4419 | 10. MUR 4450 | 19. MUR 4465 |
| 2. MUR 4423 | 11. MUR 4452 | 20. MUR 4469 |
| 3. MUR 4424 | 12. MUR 4455 | 21. MUR 4475 |
| 4. MUR 4429 | 13. MUR 4456 | 22. MUR 4479 |
| 5. MUR 4430 | 14. MUR 4457 | 23. MUR 4482 |
| 6. MUR 4431 | 15. MUR 4458 | 24. MUR 4487 |
| 7. MUR 4433 | 16. MUR 4461 | 25. MUR 4488 |
| 8. MUR 4437 | 17. MUR 4462 | 26. MUR 4489 |
| 9. MUR 4440 | 18. MUR 4464 | |

5/6/97
Date


Lawrence M. Noble
General Counsel

97043820068

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Enforcement Priority.

)
)
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that the Commission decided by a vote of 5-0 on May 12, 1997, to take the following actions with respect to the General Counsel's May 6, 1997 report on enforcement priority:

A. Decline to open a MUR, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 338
2. Pre-MUR 339

B. Take no action, close the file effective May 19, 1997, and approve the appropriate letters in the following matters:

- | | | |
|-------------|--------------|--------------|
| 1. MUR 4419 | 10. MUR 4450 | 19. MUR 4465 |
| 2. MUR 4423 | 11. MUR 4452 | 20. MUR 4469 |
| 3. MUR 4424 | 12. MUR 4455 | 21. MUR 4475 |
| 4. MUR 4429 | 13. MUR 4456 | 22. MUR 4479 |
| 5. MUR 4430 | 14. MUR 4457 | 23. MUR 4482 |
| 6. MUR 4431 | 15. MUR 4458 | 24. MUR 4487 |
| 7. MUR 4433 | 16. MUR 4461 | 25. MUR 4488 |
| 8. MUR 4437 | 17. MUR 4462 | 26. MUR 4489 |
| 9. MUR 4440 | 18. MUR 4464 | |

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

Attest:

5-13-97
Date

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

Received in the Secretariat: Tues., May 06, 1997 2:45 p.m.
Circulated to the Commission: Wed., May 07, 1997 11:00 a.m.
Deadline for vote: Mon., May 12, 1997 4:00 p.m.

bjr

97043820069



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 19, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ian A. Bowles
P.O. Box 732
Woods Hole, MA 02543

RE: MUR 4433

Dear Mr. Bowles:

On August 7, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997. This matter will become part of the public record within 30 days.

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,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

9704382007C

MUR 4433
DELAHUNT FOR CONGRESS

Complainant Ian Bowles alleges that his 1996 opponent in Massachusetts' 10th congressional district, William Delahunt, used his District Attorney campaign committee to pay expenses for his federal committee, Delahunt for Congress (the "Committee"). He cites as proof of this allegation the District Attorney committee's payment of \$17,982.88 for legal services to Cosgrove, Eisenberg, & Kiley between December 26, 1995 and June 18, 1996. Mr. Bowles notes that Thomas Kiley is treasurer of Delahunt for Congress Committee, but not of the District Attorney committee. Complainant alleges that the state committee is compensating Mr. Kiley for his work for the federal Committee, as the federal Committee discloses no payment to the treasurer for his services. Mr. Bowles also alleges that the Delahunt for congress Committee is in violation of Internal Revenue Service regulations by classifying and paying its staff as "consultants" rather than employees. The original complaint was filed on July 23, 1996. In a subsequent letter dated February 12, 1997, Mr. Bowles requested that this complaint be withdrawn.

Mr. Kiley, responding for himself and James Ricciuti, treasurer of District Attorney committee, denies any commingling of state and federal campaign funds. Mr. Kiley states that he has acted as legal counsel to Mr. Delahunt's District Attorney committee since the 1980s, but served as a treasurer for the Delahunt for Congress Committee without compensation. Mr. Kiley further states that the District Attorney Committee's payments to his firm are valid and substantiated fees for legal services rendered. Mr. Kiley further asserts that the Committee began using the term "consulting fees" to describe certain disbursements for staff payments after being advised to do so by the Federal Election Commission's Reports Analysis Division.

There appears to be no serious intent to violate the FECA. This matter is less significant relative to other matters pending before the Commission.

97043820071



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 19, 1997

Thomas R. Kiley, Treasurer
Delahunt for Congress Committee
500 Victory Road
Quincy, MA 02171

RE: MUR 4433

Dear Mr. Kiley:

On August 12, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Delahunt for Congress Committee and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997.

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.

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

Sincerely

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043820072

MUR 4433

DELAHUNT FOR CONGRESS

Complainant Ian Bowles alleges that his 1996 opponent in Massachusetts' 10th congressional district, William Delahunt, used his District Attorney campaign committee to pay expenses for his federal committee, Delahunt for Congress (the "Committee"). He cites as proof of this allegation the District Attorney committee's payment of \$17,982.88 for legal services to Cosgrove, Eisenberg, & Kiley between December 26, 1995 and June 18, 1996. Mr. Bowles notes that Thomas Kiley is treasurer of Delahunt for Congress Committee, but not of the District Attorney committee. Complainant alleges that the state committee is compensating Mr. Kiley for his work for the federal Committee, as the federal Committee discloses no payment to the treasurer for his services. Mr. Bowles also alleges that the Delahunt for Congress Committee is in violation of Internal Revenue Service regulations by classifying and paying its staff as "consultants" rather than employees. The original complaint was filed on July 23, 1996. In a subsequent letter dated February 12, 1997, Mr. Bowles requested that this complaint be withdrawn.

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There appears to be no serious intent to violate the FECA. This matter is less significant relative to other matters pending before the Commission.

97043820073



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 19, 1997

James Ricciuti, Treasurer
The Delahunt Committee
54 Broad Reach, #204A
North Weymouth, MA 02191

RE: MUR 4433

Dear Mr. Ricciuti:

On August 12, 1996, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against The Delahunt Committee and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on May 19, 1997.

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.

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

Sincerely

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

97043820074

MUR 4433

DELAHUNT FOR CONGRESS

Complainant Ian Bowles alleges that his 1996 opponent in Massachusetts' 10th congressional district, William Delahunt, used his District Attorney campaign committee to pay expenses for his federal committee, Delahunt for Congress (the "Committee"). He cites as proof of this allegation the District Attorney committee's payment of \$17,982.88 for legal services to Cosgrove, Eisenberg, & Kiley between December 26, 1995 and June 18, 1996. Mr. Bowles notes that Thomas Kiley is treasurer of Delahunt for Congress Committee, but not of the District Attorney committee. Complainant alleges that the state committee is compensating Mr. Kiley for his work for the federal Committee, as the federal Committee discloses no payment to the treasurer for his services. Mr. Bowles also alleges that the Delahunt for Congress Committee is in violation of Internal Revenue Service regulations by classifying and paying its staff as "consultants" rather than employees. The original complaint was filed on July 23, 1996. In a subsequent letter dated February 12, 1997, Mr. Bowles requested that this complaint be withdrawn.

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There appears to be no serious intent to violate the FECA. This matter is less significant relative to other matters pending before the Commission.

97043820075



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4453

DATE FILMED 6-9-87 CAMERA NO. 4

CAMERAMAN JML

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