



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4436

DATE FILMED 4-1-87 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR#95-7

August 7, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: ABRAHAM FOR SENATE - REFERRAL MATTERS

On August 1, 1996 the Commission approved the Final Audit Report on Abraham for Senate (the Committee). The report was released to the public on August 2, 1996. The attached findings from the Final Audit Report are being referred to your office:

- Apparent Excessive Contribution Resulting From Staff Advances (Finding II.A.)
- Receipt Of Excessive Contributions (Finding II.B.)
- Loan From The Candidate (Finding II.C.)

The Committee provided an affidavit from the staff member whose advances on behalf of the Committee resulted in an apparent excessive contribution. The affidavit noted that the staff member was promptly paid when expenses were submitted for reimbursement and that all expenses were ordinary and necessary expenses of the campaign. The Committee noted that the average period from the time an expense was incurred until the time it was reimbursed was only 29 days. There were no expense reimbursements outstanding.

The Committee received excessive contributions from two political committees which totaled \$6,000. In response to the interim audit report, the Committee stated that it relied in good faith on the representations that the Posthumous Victory Fund-U.S.A. was a multicandidate committee at the time of the \$5,000 contribution. The Committee also submitted a photocopy of a negotiated (\$4,000) refund check. The other excessive contribution resulted from the receipt of \$3,000 from Michigan Independent Political Action Committee, which at the time of the contribution was not a qualified, multicandidate committee. Although the Committee obtained a letter redesignating the \$2,000 excessive amount to the general election, it was not timely pursuant to 11 CFR §103.3(b)(3). The Abraham Committee eventually refunded \$1,000 to MIPAC.

The Committee's response to the interim audit report failed to provide the documentation and the explanation needed to establish the source of the funds used to make an \$8,000 candidate loan. In order to obtain the necessary documentation subpoenas were issued to the Michigan National Bank and to Crestar Bank requiring the production of the relevant records. Based on the documents received in response to the subpoenas, the Audit staff determined that the Committee received an excessive contribution from the Leadership Fund, an unregistered political committee, and that the contribution was disclosed as a loan from the Candidate.

It is the opinion of the Audit staff that pursuing as compliance matters the apparent excessive contribution resulting from staff advances and receipt of excessive contributions may not constitute the most efficient use of Commission resources. However, in our opinion, the matter of the loan from the candidate should be pursued.

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

Attachments:

Finding II.A. - Apparent Excessive Contribution Resulting From Staff Advances, Final Audit Report Pgs. 3-5.

Finding II.B. - Receipt Of Excessive Contributions, Final Audit Report Pgs. 5-6.

Finding II.C. - Loan From Candidate, Final Audit Report Pgs. 6-9.

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II. AUDIT FINDINGS AND RECOMMENDATIONS

A. APPARENT EXCESSIVE CONTRIBUTION RESULTING FROM STAFF ADVANCES

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted, it shall be considered a contribution by the individual unless it is for the individual's transportation expenses while traveling on behalf of a candidate or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business such as food or lodging.

During our review of Committee disbursements, the Audit staff noted a number of reimbursements to Committee staff for campaign expenditures such as office equipment, supplies, telephone, postage, event expenses and printing. As part of the Audit staff's analysis of such reimbursements, contributions resulting from the untimely reimbursement of expenses incurred by individuals were added to their direct contributions. Our review indicated that one individual (Sandy Baxter) made an apparent excessive contribution.

The Audit staff determined that the largest amount in excess for this individual was \$10,254, on October 27, 1994. Additionally, during the period September 28 through December 4, 1994, the excessive amount averaged about \$5,855. Much of the excessive amount occurred as a result of the individual making advances for event expenses. At the conclusion of fieldwork, there were no expense reimbursements outstanding.

This matter was discussed with Committee representatives during the exit conference. The Audit staff provided Committee representatives with a schedule of excessive amounts and a cover sheet explaining symbols and methodology used by the Audit staff.

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Subsequent to the exit conference, the Committee submitted a statement addressing the reimbursements to Ms. Baxter which states,

"The payments involving Sandy Baxter concern a staff member paying for necessary expenses, and then being promptly (sic) reimbursed by the Committee. While some of the instances may have involved expenses of greater than \$1,000, all expenses by Ms. Baxter were submitted in a timely fashioned (sic) and Ms. Baxter was reimbursed by the Committee promptly.

While this may not conform with the Commission's strict interpretation of the Federal Election Campaign Act and its Regulations, Ms. Baxter made these payments as matter of convenience and practicality. In the heat of the campaign and the pressure of putting on events, it was not always possible to have the Committee pay directly for all the expenses.

As a mitigating circumstance, the expenses were always promptly repaid to Ms. Baxter and, as the Audit staff has noted, direct payments by a paid staffer occurred (sic) only in the case of Ms. Baxter. In sum, there is no pattern and practice of violations; merely a paid staffer trying to insure that events for a candidate went smoothly."

The interim audit report recommended that the Committee submit any other comments or documentation that may be relevant to this matter.

In response to the interim audit report, the Committee noted that with respect to the apparent excessive contributions attributed to Sandy Baxter, the largest amount in excess was \$10,254 on October 27, 1994; however, by October 31, 1994 this amount was reduced to \$4,095. Further, for the period September 28 through December 4, 1994, when the majority of expenditures were incurred by Ms. Baxter, the average period from the time an expense was incurred until the time it was reimbursed was only 29 days. The response argues that "[e]ven if such expenditures are technically classified as contributions, such excess contributions were promptly refunded. The regulations permit 60 days for the redesignation or reattribution of excessive contributions. 11 CFR §103.3(b)(3)."

The Committee's response also included an affidavit from Sandy Baxter which attests that the use of her credit card was never intended to constitute a contribution and that "...constant traveling and being in a different place almost every day made it practically impossible to obtain checks in advance of every event from the campaign." Further, the affidavit notes that she was promptly paid when expenses were submitted for reimbursement and that all expenses were ordinary and necessary expenses of the campaign. In many instances these expenses were incurred without going through the formal disbursement approval process and as such the campaign was unaware a

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contribution was being made. Her affidavit concludes that she "...was merely acting as most independent fund-raisers operate."

In the Audit staff's opinion, the 60 day period provided under 11 CFR 103.3(b)(3) for reattribution or redesignation of excessive contributions is not applicable in this situation. Permissible advances and their timely reimbursements are addressed at 11 CFR 116.5 as cited above.

B. RECEIPT OF EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 431(11) of Title 2 of the United States Code states, in relevant part, that the term "person" includes an individual, partnership, committee, association or any other organization or group of persons.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

The Audit staff's review of contributions received from political committees indicated that two such committees exceeded their limitation by \$6,000.

In one instance, a \$5,000 contribution was received from Posthumous Victory Fund-U.S.A., a committee registered with the Commission which had not qualified

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as a multicandidate political committee at the time of the contribution.² Therefore, this committee exceeded its limitation by \$4,000.

The second excessive contribution resulted from the receipt of \$3,000 from Michigan Independent Political Action Committee (MIPAC). The contributor's check was dated May 31, 1994; MIPAC did not become a qualified, multicandidate committee until October 11, 1994. Although the Committee obtained a letter, dated September 9, 1994, redesignating the \$2,000 excessive amount to the general election, it was not timely pursuant to 11 CFR §103.3(b)(3). On November 2, 1994, the Committee refunded \$1,000 to MIPAC.

The Audit staff discussed this matter with Committee representatives at an interim conference. At the exit conference, Committee representatives provided the Audit staff with a photocopy of a \$4,000 check issued to "Posthumus Victory Fund".

The interim audit report recommended that the Committee provide a photocopy of the front and back of the negotiated refund check issued to Posthumus Victory Fund-U.S.A. and provide any other comments or documentation that may be relevant to this matter.

In response to the interim audit report, the Committee submitted a photocopy of the front and back of the negotiated refund check. The response states that the Posthumus Victory Fund-U.S.A. told the Committee it was a multicandidate committee. Committee staff called the FEC to confirm its status and were told that it was registered as a multicandidate committee. Committee staff were "unaware of the distinction between 'registered' and 'qualified' status." The response concludes that the Committee relied in good faith on the representations of the Posthumus Victory Fund-U.S.A. and acceptance of the excessive contribution was inadvertent.

C. LOAN FROM THE CANDIDATE

Section 431(8)(A)(i) of Title 2 of the United States Code defines the term "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 110.10(a) of Title 11 of the Code of Federal Regulations states that candidates for Federal office may make unlimited expenditures from personal funds.

² Under 2 U.S.C. §441a(a)(2), a committee which has qualified as a multicandidate committee is entitled to make contributions with respect to elections for Federal office which do not exceed \$5,000.

Section 110.10(b) of Title 11 of the Code of Federal Regulations defines "personal funds" as any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title or an equitable interest.

Section 100.5(a) of Title 11 of the Code of Federal Regulations defines a political committee as any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 or which makes expenditures aggregating in excess of \$1,000 during a calendar year.

During fieldwork, the Audit staff reviewed two loans made by the Candidate to the Committee, one in the amount of \$15,000 and another in the amount of \$8,000. Based on the records available, in support of the \$15,000 loan, the Audit staff had no indication that the source of the funds used to make the loan were anything other than the personal funds of the candidate. However, the documentation for the \$8,000 loan indicated that the loan had been drawn on a joint personal checking account maintained by the Candidate and his spouse at the Michigan National Bank (the joint account). The check, dated July 20, 1994 and signed only by the Candidate, was reported by the Committee as having been received on July 30, 1994.

In response to the Audit staff's request for additional documentation establishing that this loan was made using the Candidate's personal funds, the Committee stated that the source of the funds for this loan was money which had been transferred from an account the Candidate maintained at Crestar Bank in Washington, DC (the Crestar account).

The Committee later provided a copy of a bank statement for the joint account which showed that a wire transfer in the amount of \$8,711 had been credited on August 11, 1994, as well as a letter from the Michigan National Bank indicating that the source of these funds was the Crestar account. However, this statement did not show the balance for the joint account at the time the loan was made.

At the exit conference, the Audit staff requested that the Committee provide additional documentation demonstrating that the source of the moneys transferred from the Crestar account represented the personal funds of the Candidate.

Subsequent to the exit conference, the Committee provided the Audit staff with an affidavit from the Candidate's spouse which indicated that none of the moneys associated with the Crestar account represented her funds.

The documentation made available to the Audit staff by the Committee at the time of the interim audit report did not establish the source of the funds used to make this loan. Further, the transfer from the Crestar account was made approximately three weeks after the date of the check issued from the joint account.

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The interim audit report recommended that the Committee provide documentation to demonstrate that the loan was made using the Candidate's personal funds. The documentation was to include but not be limited to:

- from the joint account: account statement(s), check register(s) and a description of the source of the deposits on and around July 20, 1994; and
- from the Crestar account: account statement(s) and a description of the source of deposits on and around August 11, 1994; as well as an explanation clarifying how the August wire transfer from Crestar could be the source of funds for the Candidate loan made July 20, 1994 from the joint account.

In response to the interim audit report, the Committee states that the documents previously submitted:

"...demonstrate that all the assets in the \$8,000 candidate loan were the property of Spencer Abraham."

In any event, the amount involved in this loan, which was repaid within 60 days, is minuscule in a \$4 million campaign. Due to the passage of time (the original bank where the funds were deposited has since closed down and merged with another bank), the Committee is unable to obtain any additional documentation. Even in a "worst case scenario", the Candidate's spouse could not be attributed more than one-half (50 percent) of the loan, or \$4,000. Given that she may make a \$2,000 (sic), this loan would represent at the most an excessive contribution of \$2,000, which was subsequently repaid."

The Committee's response failed to provide the documentation and explanation needed to determine the source of the funds used to make the loan. Therefore, in order to obtain the necessary documentation, subpoenas were issued to the Michigan National Bank and to Crestar Bank requiring the production of relevant records for the months of July and August 1994.

In response to the Commission's subpoena, Crestar Bank stated that it had located no records that were responsive to the subpoena which requested documents relating to accounts in the name of E. Spencer or Jane L. Abraham.

The records provided by Michigan National Bank indicated that on July 28, 1994, two days before the Committee reported receiving the loan from the Candidate, an \$8,000 deposit was credited to the joint checking account of E. Spencer and Jane L. Abraham. This deposit resulted in a balance of \$10,359 in the account and consisted of a

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single check signed by and made payable to Jane Abraham. The check was written on the account of the Leadership Fund (the Fund) maintained at the City National Bank of Washington DC. Initially, this check was the source of the loan to the Committee. The preprinted address on the Fund's check was 1911 Crisland Cove, Falls Church, Va. That address had been crossed-out and replaced by the Candidate's residential address in Auburn Hills, Michigan. The Fund is not registered with the Commission or with the equivalent agencies in Virginia or Michigan. Further, there is no telephone listing in the Auburn Hills area of Michigan for the Fund.

On Friday, July 29, 1994, the check effecting the loan to the Committee was debited from the joint checking account leaving a balance of \$2,070. However, five days later, on Wednesday August 3, 1994, the joint checking account was debited \$8,000 for a returned item, the Fund check. This resulted in a balance of -\$6,230⁹. The records obtained do not indicate any overdraft protection on this account. The following day, August 4, 1994, the Fund check was redeposited and once again credited to the joint checking account, resulting in an account balance of \$1,770.

On August 8, 1994, four days after its redeposit, the Fund check was again returned and the joint checking account was debited causing the account balance to fall to -\$6,432. The joint account remained overdrawn for three days until, on August 11, 1994, a wire transfer of \$8,711 was received from an account at Crestar Bank. Since the subpoena to Crestar Bank had produced no information about any account in the name of E. Spencer or Jane L. Abraham, the account number from the wire transfer credited to the joint account was used to prepare an additional subpoena to Crestar Bank. In response to that subpoena, Crestar provided copies of statements and associated documents for a business checking account held in the name of the Leadership Fund. The address on the statements is the Candidate's residence in Michigan. The statements cover the period March 1, 1994 to August 11, 1994, the date that the account closed. The only activity in the account, other than service charges, is the wire transfer to the joint checking account. No information about the source of the funds in this account is available.

Based on the above, the Audit staff concludes that the Committee received an excessive contribution from the Leadership Fund, an unregistered political committee, in the amount of \$7,000 (\$8,000-\$1,000 contribution limitation) and that the contribution was disclosed as a loan from the Candidate.

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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

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In the Matter of)
)
Enforcement Priority System II)
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On September 10, 1996, the Commission approved an Enforcement Priority System for enforcement matters assigned to OGC Public Financing, Ethics & Special Projects staff ("EPS II"). See Memorandum to the Commission, *PFESP Enforcement Priority System*, dated August 6, 1996.

This Office has rated all of its PFESP enforcement cases under EPS II. Based upon that evaluation, this Office has identified 12 MURs for closing. By closing these 12 cases, this Office will be better able to focus its resources on the more significant cases, generally presidential matters. Moreover, these closings will enable us to process the 1996 presidential audits in a more efficient manner.

¹ This Office is currently assessing the impact of *FEC v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996), on our caseload. In *Williams*, the court ruled that the five-year statute of limitations under 28 U.S.C. § 2462 applies to the imposition of civil penalties in Commission enforcement actions. Unlike the initial implementation of the Enforcement Priority System ("EPS"), this Office is not recommending that certain cases involving stale activity be closed at this time. See, e.g., Implementation of the Enforcement Priority System, approved April 20, 1993. This Office will forward specific recommendations in light of *Williams* in a subsequent report to the Commission.

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Attached for Commission approval is the form letter that would be sent should these recommendations be approved. With the exception of notification letters sent to respondents in audit referrals, this Office will use the form notification letters currently used by the Enforcement Division. Since there is no form notification letter for audit referrals, this Office drafted the form notification letter at Attachment 1. Unlike RAD referrals, audit referrals are immediately assigned a MUR number and will eventually go on the public record when closed. Thus, it is necessary for us to notify the respondents in these instances prior to the matter appearing on the public record.

II. CASES RECOMMENDED FOR CLOSING

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

Having evaluated the PFESP enforcement caseload, this Office has identified 12 cases that do not warrant pursuit relative to other pending matters.² A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this Report. See Attachment 2. Also attached are the referral materials where that information has not been circulated previously to the Commission. See Attachment 3.

² These matters are: (1) MUR 4251 (Republican State Committee of Delaware); (2) MUR 4266 (Friends of Marc Little); (3) MUR 4271 (People for English); (4) MUR 4300 (The Committee to Elect Michael Flanagan); (5) MUR 4337 (Montana State Democratic Central Committee); (6) MUR 4345 (Nevada State Democratic Party); (7) MUR 4346 (Citizens for Jack Metcalf); (8) MUR 4381 (United Republican Fund of Illinois, Inc.); (9) MUR 4400 (San Bernardino County Republican Central Committee); (10) MUR 4436 (Abraham for Senate); (11) MUR 4441 (Republican Party of Dade County); and (12) MUR 4618 (Mississippi Democratic Party Political Action Committee).

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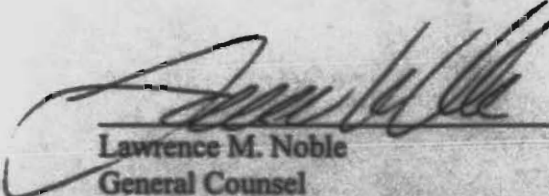
RECOMMENDATIONS

1. Approve the notification form letter at Attachment 1.
2. Take no further action, close the file effective (date) and approve the appropriate letters in the following matters:

- a. MUR 4251
- b. MUR 4266
- c. MUR 4271
- d. MUR 4300
- e. MUR 4337
- f. MUR 4345
- g. MUR 4346
- h. MUR 4381
- i. MUR 4400
- j. MUR 4436
- k. MUR 4441
- l. MUR 4618

Date

2/21/97


Lawrence M. Noble
General Counsel**Attachments**

1. Form letter
2. Description of low rated cases
3. Referral materials not previously circulated

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Enforcement Priority System II.

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1997, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Approve the notification form letter, as recommended in the General Counsel's Report dated February 21, 1997.
2. Take no further action, close the file effective March 5, 1997 and approve the appropriate letters in the following matters:
 - a. MUR 4251
 - b. MUR 4266
 - c. MUR 4271
 - d. MUR 4300
 - e. MUR 4337
 - f. MUR 4345
 - g. MUR 4346
 - h. MUR 4381
 - i. MUR 4400
 - j. MUR 4436
 - k. MUR 4441
 - l. MUR 4618

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

Attest:

2-27-97
Date

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

Received in the Secretariat: Fri., Feb. 21, 1997 4:21 p.m.
Circulated to the Commission: Mon., Feb. 24, 1997 11:00 a.m.
Deadline for vote: Thurs., Feb. 27, 1997 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 19, 1997

Mark Larson, Treasurer
Abraham for Senate
26913 Northwestern Highway Suite 475
Southfield, MI 48034

RE: MUR 4436

Dear Mr. Larson:

On August 8, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving the Abraham for Senate ("Committee") and Mark Larson, as treasurer, for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b). After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Committee. Accordingly, the Commission closed its file in this matter on March 5, 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 me at (800)424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker
Special Assistant General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF RUL # 4436

DATE FILMED 4-9-57 CAMERA NO. 4

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