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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of

A Lot of People Who Want Gex Williams in
Congress Committee and Daryl Wolking,
as treasurer
Gex Williams
Dr. Arthur Nitz

MUR 4825

SENSITIVE

GENERAL COUNSEL'S REPORT #3

I. **ACTIONS RECOMMENDED:** Take no further action, close the file, and approve the appropriate letters.

II. **BACKGROUND**

This matter arose from a complaint alleging that Senator Gex Williams, A Lot of People Who Want Gex "Jay" Williams in Congress Committee and Daryl Wolking, as treasurer, and Arthur Nitz ("Respondents") violated provisions of the Federal Election Campaign Act of 1971, as amended, ("Act") by arranging a fraudulent land deal to subsidize Williams' House campaign. In May of 1997, Nitz paid \$60,000 for title to approximately ten acres of Williams' farm, which Nitz directly conveyed to the A Compassionate Pregnancy Care Center, Inc. The complaint alleges that the sale constituted an illegal \$60,000 contribution to the Williams campaign. See First General Counsel's Report, dated May 19, 2000, pages 3-5.

On May 26, 2000, the Commission found reason to believe that A Lot of People Who Want Gex "Jay" Williams in Congress Committee and Daryl Wolking, as treasurer, and Gex Williams violated 2 U.S.C. § 441a(f) by accepting an excessive contribution. On June 8, 2000¹

¹ On June 8, 2000, the Commission voted to rescind the May 26, 2000 reason to believe finding that Arthur Nitz violated 2 U.S.C. § 441(a)(1)(A) and found reason to believe that Arthur Nitz violated 2 U.S.C. § 441a(a)(1)(A).

1 the Commission found reason to believe that Arthur Nitz violated 2 U.S.C. § 441a(a)(1)(A) by
2 making an excessive contribution.

3 After reviewing responses to the reason to believe findings, including an appraisal report
4 respondents submitted valuing the fair market value of the property as unencumbered at \$65,000,
5 the Office of General Counsel ("OGC") recommended that the Commission authorize subpoenas.
6 See General Counsel's Report #2, dated March 19, 2001; *Resubmission* of General Counsel's
7 Report, dated July 9, 2001. Rather than approving formal discovery, the Commission, on
8 July 24, 2001, referred the matter back to OGC and authorized it to obtain its own appraisal of
9 the fair market value of the Williams property. In a Memorandum to the Commission dated
10 October 2, 2001, OGC informed the Commission that it had found an appraiser and that it was
11 proceeding with the appraisal and a title search. This Office received the title search report on
12 January 8, 2002, and the appraisal report on February 4, 2002.

13 **III. ANALYSIS**

14 Based on guidance from the Commission, OGC obtained an appraisal of the fair market
15 value of the Williams property at the time of the sale in 1997. The appraisal consists of two
16 separate retrospective market value estimates of the property; one is the fair market value of the
17 property as unencumbered, and the other is the fair market value of the property as encumbered
18 i.e., the seller retaining the right to exclusive use of the land for two years. Attachment 1.

19 Based on an inspection of the property, market investigation, and analysis, the appraiser
20 concluded that, as of May 1, 1997, the fair market value of the property as unencumbered was
21 \$90,000 and as encumbered was \$80,000. Attachment 1 at 2. The appraisal states that the two

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1 market values were made "with a reasonable exposure time and marketing period of less than 12
2 months."² *Id.*

3 A title search was also conducted to determine whether there were any liens or other
4 financial encumbrances on the property. Attachment 2. A review of the title search documents
5 does not reflect any liens or encumbrances, except for the two-year exclusive use, on the
6 property.³ Attachment 2. Documents show that the deed conveying the property "clear, free, and
7 unencumbered" was executed on October 10, 1997; and recorded on April 15, 1998. *Id.* at
8 10-11, 16. A Partial Release of Mortgage, releasing all but 1.7130 acres, signed by the lien
9 holder Huntington Bank, is dated August 4, 1998.⁴ *Id.* at 20.

10 The purpose for conducting the appraisal and title search was to independently determine
11 whether the Williams property was sold for more than fair market value. Based on the appraisal
12 valuation of the property, the \$60,000 sale price of the Williams property was well below the fair
13 market value as encumbered (\$80,000). This Office understood that the Commission would not
14 pursue additional discovery if its own appraisal reflected a fair market value that was at or above
15 the sale price of the Williams property. Given Commission guidance, the determination that the

² Although the Williams property was sold privately, the appraisal was conducted based on its value on the open market. A fair market value appraisal, by definition, is based on the value of the property on the open market, and does not include private sales. Attachment 1 at 10-11. Private sales such as sales to relatives, distress sales, quick sales, etc., are not considered arms' length transactions and thus would not be included in appraisals.

³ The title search documents contain references to possible liens against individuals with the name Judy Williams, the name of Gex Williams' wife. Attachment 2 at 3. This Office has checked the names, social security numbers, and addresses of these individuals and has determined that none of them is Gex Williams' wife. Thus, documents related to these liens have not been included in the attachment.

⁴ The mortgage release date is approximately ten months after the date of the deed (October 10, 1997). Given that Kentucky law provides that a holder of a lien on real property must release the lien within 30 days from the date of satisfaction, Ky. Rev. Stat. Ann. § 382.365 (Banks-Baldwin 2001), it appears that the mortgage may have been paid sometime in July 1998. Although one would expect the mortgage release to take place during the closing process, the buyer in this matter did not use a commercial lender to finance the purchase of the property (there are no mortgage liens on the property), and thus there was no pressing need for the mortgage to be paid by closing. In addition, it is not unusual for the mortgage release process to take several months to complete.

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Williams property was sold for less than fair market value should conclude the inquiry into this matter. Accordingly, this Office recommends that the Commission take no further action, close the file, and approve the appropriate letters.

IV. RECOMMENDATIONS

1. Take no further action.
2. Close the file.
3. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

3/14/02
Date

BY: Rhonda J. Vosangh
Rhonda J. Vosangh
Associate General Counsel

Attachments:

1. Appraisal Report
2. Title Search

Staff Assigned: Dominique Dillenseger