



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

June 1, 1999

Allen Fleischer, Treasurer
Pepsi-Cola Bottlers Association - PAC
251 O'Connor Ridge Boulevard
Irving, TX 75038

RE: MUR 4900

Dear Mr. Fleischer:

On May 25, 1999, the Federal Election Commission found reason to believe that Pepsi-Cola Bottlers Association - PAC ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act.") However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that failing to electronically file timely your 1998 October Quarterly Report is a violation of 2 U.S.C. 434(a)(4)(A)(i). It is the filing committee's responsibility to maintain all confirmations of receipt for electronically filed reports. You should take steps to ensure that all future reports are filed timely and that all necessary records are properly maintained.

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

If you have any questions, please contact Karen White, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Thomas".

Scott E. Thomas
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Pepsi-Cola Bottlers Association-PAC
and Allen Fleischer, as treasurer

MUR: 4900

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended, requires treasurers of political committees other than authorized committees of a candidate to file periodic reports of receipts and disbursements. In any calendar year in which a regularly scheduled general election is held, all political committees that choose not to file on a monthly basis shall file quarterly reports which shall be filed no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(4)(A)(i).

Pepsi-Cola Bottlers Association-PAC ("Pepsi-Cola Bottlers") is a political committee not authorized by any candidate and has elected to report on a quarterly basis. Pursuant to 2 U.S.C. § 434(a)(4)(A)(i), the due date for Pepsi-Cola Bottlers 1998 October Quarterly Report was October 15, 1998.

Pepsi-Cola Bottlers was notified on December 29, 1997, September 18, 1998 and November 4, 1998 that its 1998 October Quarterly Report was due on October 15, 1998.

On December 7, 1998, the Reports Analysis Division contacted Pepsi-Cola Bottlers Controller, Nancy Martinez and informed her that Pepsi-Cola Bottlers had failed to file their 1998 October Quarterly Report. Ms. Martinez stated that she had attempted

to electronically file the report and had assumed that the filing had been successful. The Commission has no record of receiving the 1998 October Quarterly Report.

On December 11, 1998, Pepsi-Cola Bottlers filed its 1998 October Quarterly Report, 57 days late, disclosing receipts totaling \$4,170 and disbursements totaling \$15,000. A cover letter enclosed with the report stated the following: "As we discussed, it was filed electronically, and I apparently failed to print out the acknowledgment, which I received from the FEC via e-mail. However, I do have the validation information, which I printed just prior to e-mailing the report."

There are two basic steps involved with electronic filing: (1) Preparing the report in accordance with the FEC's electronic filing format and using the validation program to check that the filing has been correctly formatted and, (2) Submitting the filing to the FEC. The Federal Election Commission's electronic filing system records all successful transmissions and sends automated confirmations of receipt. However, no confirmation could be found of a successful transmission of the Committee's 1998 October Quarterly Report. Respondents' validation, which they have not submitted to the Commission, confirms only that the report was properly formatted for transmission. The validation does not confirm either a successful transmission or attempt at transmission. Pepsi-Cola Bottlers started electronically filing their reports with the 1998 July Quarterly Report, and should have been familiar with the electronic filing process.

Therefore, there is reason to believe that the Pepsi-Cola Bottlers Association-PAC and Allen Fleischer, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i).