

JUN 26 2000

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

Staff Member: Delbert K. Rigsby

Audit Referral: 99-07

Audit Referral Date: June 15, 1999

Date Activated: October 15, 1999

Statute of Limitations: February 15, 2001
to April 15, 2001

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Clinton/Gore '96 Primary Committee, Inc. and an
Pollitt, as treasurer

Democratic National Committee and Andrew Tobias
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)(1)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431(9)(A)(ii)
2 U.S.C. § 431(11)
2 U.S.C. § 434(b)(4)(H)(iv)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(7)(A)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(b)(1)(A)
26 U.S.C. § 9038(a)
11 C.F.R. § 100.5(e)(3)
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 100.7(a)(1)(iii)
11 C.F.R. § 100.7(a)(1)(iii)(A)
11 C.F.R. § 100.7(a)(1)(iii)(B)
11 C.F.R. § 110.8(e)(1)(i)
11 C.F.R. § 110.8(e)(1)(ii)
11 C.F.R. § 110.8(e)(2)(i)
11 C.F.R. § 110.8(e)(2)(ii)

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COMMISSION
SECRETARIAT
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1996-663-40-1
21-04-399-4967

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

21.04.399.4962

I. GENERATION OF MATTERS

Audit Referral 99-07 was generated by an audit of the Clinton/Gore '96 Primary Committee, Inc. (the "Primary Committee") and Joan Pollitt, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Audit covered the period between April 10, 1995 and December 31, 1997. The Audit Division referred a finding that relates to an apparent excessive contribution from the Democratic National Committee to the Primary Committee in connection with a Primary Committee dinner at the Sheraton New York Hotel & Towers.¹ The Audit Division's referral materials are attached.² Attachment 1.

¹ On October 15, 1999, the Commission voted to sever the issue of the media advertisements from AR 99-07. Thus, this First General Counsel's Report concerns only the issue of the in-kind contribution by the Democratic National Committee to the Primary Committee in connection with the dinner at the Sheraton Hotel.

² The Commission voted on March 4, 1999 to receive the finding in the Audit Report on the Primary Committee that the DNC made an in-kind contribution to the Primary Committee in connection with the dinner at the Sheraton Hotel without any determination on the merits of the Audit staff's analysis of the facts or interpretation of the law.

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II. FACTUAL AND LEGAL ANALYSIS

A. LAW

No multicandidate political committee⁵ shall make contributions to any candidate and his or her authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A).

It is unlawful for a candidate or political committee to knowingly accept any contribution or make any expenditure in violation of the dollar limits established by the Federal Election Campaign Act, as amended. 2 U.S.C. § 441a(f).

Contributions include a "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." 2 U.S.C. § 431(8)(A)(1)(iii).

A political party may make a reimbursement for the expenses of a candidate who is engaging in party building activities, without the payment being considered a contribution to the candidate, and without the reimbursed expense being considered an expenditure counting against the limitations on expenditures as long as the event is a bona fide party event or appearance; and

⁵ A multicandidate committee is a political committee that has been registered under Section 433 of Title 2 of the United States Code for at least six months; received contributions for Federal elections from more than 50 persons; and except for any State political party organization, has made contributions to five or more Federal candidates. 2 U.S.C. § 441a(a)(4).

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no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election. 11 C.F.R. §§ 110.8(e)(1)(i) and (ii). An event or appearance occurring prior to January 1 of the year of the election for which the individual is a candidate is presumptively party-related. 11 C.F.R. § 110.8(e)(2)(i). However, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures made in connection with the event are governed by the Act's contribution and expenditure limitations. 11 C.F.R. § 110.8(e)(2)(ii).

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Each treasurer of a political committee shall file detailed reports of its receipts and disbursements. 2 U.S.C. §§ 434(a)(1) and 434(b). The disbursements shall include expenditures made under section 441a(d). 2 U.S.C. § 434(b)(4)(H)(iv).

B. AR 99-07 ANALYSIS - Apparent Excessive Contribution to the Clinton/Gore Primary Committee

During the field audit of the Primary Committee, the Audit staff identified payments totaling \$252,555 from the Primary Committee to the Sheraton New York Hotel & Towers (the "Sheraton Hotel") in connection with a "Clinton/Gore '96 Reception/Dinner" held on February 15, 1996 (the "February 15" event).⁹ Attachment 1 at 3. The guest list totaled 1,544 individuals, of which 165 were invited by the Democratic National Committee (the "DNC"). On March 8, 1996, the Sheraton Hotel invoiced the Primary Committee \$142,322 for service related to the February 15 event. *Id.* at 4. This invoice was accompanied by a copy of an estimated bill from the Sheraton Hotel to the DNC in the amount of \$19,832, charging the DNC for its share of the expenses in connection with this event, including dinner (\$13,200); floral (\$466); linen (\$185); stanchions, ropes, pipe and drape (\$220); office rental (\$610); phone/fax/printer (\$671), and sleeping rooms (\$4,500).¹⁰ *Id.*

⁹ Based on the information available to the Audit staff, the staff determined that the event was originally scheduled for January 1996, and \$134,739 was paid by the Primary Committee as a deposit for the dinner. Since the dinner was canceled and rescheduled, the Sheraton Hotel returned \$103,260 to the Primary Committee, and charged a cancellation fee of \$31,479. Subsequently, the Primary Committee paid \$117,816 toward the February 15, 1996 event.

¹⁰ The expenses for some of the items paid by the DNC have been rounded.

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During audit fieldwork, the Audit staff reviewed the Sheraton Hotel's estimated bill to the DNC, and its invoice to the Primary Committee, but could not determine whether expenses totaling \$10,675 on the Primary Committee invoice were paid because there was no documentation, such as canceled checks. *Id.* at 4.

The Audit staff concluded that the cost of the February 15 event was a qualified campaign expense and recommended in the Exit Conference Memorandum (the "ECM") that the Primary Committee provide canceled checks evidencing payment of the outstanding \$10,675 and a final invoice issued by the Sheraton to the DNC. *Id.* Furthermore, the Audit staff concluded that the event did not appear to be a joint fundraising effort with the DNC, and the ECM recommended that the Primary Committee provide documentation and explanation of the allocation method it used to allocate expenses. *Id.* at 5. Finally, the Audit staff requested that the Primary Committee provide documentation to demonstrate that the expenses paid by the DNC were not in connection with the candidate's campaign for nomination and thus an in-kind contribution to the Primary Committee from the DNC. *Id.*

In response to the ECM, the Primary Committee provided invoices and documentation showing that all expenses associated with the February 15 event were paid,¹¹ and explained that 11% of the guests were invited by the DNC; thus, the Primary Committee allocated 11% of the total bill to the DNC. Attachment 2 at 2. Additionally, the Primary Committee stated that the event was not a fundraiser, but admitted that its primary purpose was to garner support for the Clinton/Gore presidential ticket and to bring attention to the candidates and their agenda to New York. *Id.* at 1. To support its claim, the Primary Committee submitted an affidavit from the

¹¹ Although the DNC's estimated bill totaled \$19,832, it actually paid \$24,926 after catering and room charges were added. See Attachment 1 at 5.

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DNC General Counsel, which stated that while conducting fundraising in New York state, the DNC learned that the President and Vice President would be attending the February 15 event, and the DNC invited a small number of its own guests to the event. *Id.* at 3. Moreover, the Primary Committee explained that the DNC guests were regarded as potential contributors to the DNC, but provided no documentation that the DNC guests were potential contributors or that they received any solicitation as a result of their attendance. Attachment 2 at 2.

The DNC's costs associated with the February 15 event appear to be expenses made in connection with the candidate's campaign for nomination and thus an in-kind contribution to the Primary Committee. 2 U.S.C. § 431(8)(A)(1); 11 C.F.R. § 100.7(a)(1). The Primary Committee admitted that the purpose of the February 15 event was "to garner support for the Clinton/Gore '96 Presidential ticket."¹² Attachment 2 at 1.

Pursuant to the Act, the DNC could contribute \$5,000 to the Primary Committee. *See* 2 U.S.C. § 441a(a)(2)(A). The DNC paid \$24,926 toward the total cost of the Clinton/Gore '96 Reception/Dinner at the Sheraton Hotel, which appears to be an in-kind contribution to the Primary Committee. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.7(a)(1). However, the DNC could have paid for these expenses under 2 U.S.C. § 441a(d). The DNC's limit for coordinated expenditures under 2 U.S.C. § 441a(d) for the 1996 presidential election cycle was \$11,994,007. As of May 18, 2000, the DNC designated expenses totaling \$11,288,510 as coordinated expenditures. Thus, the expenses paid by the DNC for the Sheraton Hotel dinner could be applied toward the DNC's coordinated expenditure limit.

¹² Even without this admission that the purpose was to influence the election, the February 15 event could have presumptively been for the purpose of influencing President Clinton's election because it is an event or appearance occurring on or after January 1 of the year of the election for which he is a candidate. 11 C.F.R. § 110.8(e)(2)(ii).

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Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, made an excessive in-kind contribution of \$19,926 to the Clinton/Gore '96 Primary Committee, Inc. in violation of 2 U.S.C. § 441a(a)(2)(A). Likewise, the Office of General Counsel recommends that the Commission find no reason to believe that the Clinton/Gore '96 Primary Committee, Inc. and Joan Pollitt, as treasurer, accepted an excessive in-kind contribution of \$19,926 from the DNC in violation of 2 U.S.C. § 441a(f).

Because the DNC did not report the expenditures for the Primary Committee dinner at the Sheraton Hotel as Section 441a(d) expenses, the Office of General Counsel recommends that the Commission find reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434(b)(4)(H)(iv), but take no further action provided that the Democratic National Committee amends its disclosure report to reflect those expenses as made pursuant to 2 U.S.C. § 441a(d).¹³ This Office will send an admonishment letter to the Democratic National Committee indicating that they may amend their report.

¹³ If the Democratic National Committee amends its report to reflect the expenses as Section 441a(d) expenses, this Office will then recommend to the Commission that this file be closed with respect to the Democratic National Committee.

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Pages 10-20 contain information not relevant to this case.

III. RECOMMENDATIONS

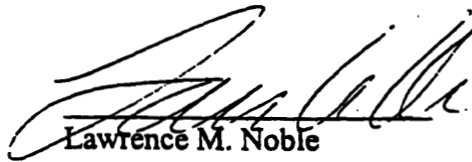
1. Open a Matter Under Review.
2. Find no reason to believe that Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, accepted an excessive in-kind contribution from the Democratic National Committee in violation of 2 U.S.C. § 441a(f) and close the file as it relates to the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer.
3. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, made an excessive contribution to the Clinton/Gore '96 Primary Committee, Inc., in violation of 2 U.S.C. § 441a(a)(2)(A).
4. Find reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, failed to report the expenditures for the Clinton/Gore '96 Primary Committee dinner as Section 441a(d) expenses in violation of 2 U.S.C. § 434(b)(4)(H)(iv), and take no further action provided that the Democratic National Committee amends its disclosure report to reflect those expenses as Section 441a(d) expenses.

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11. Approve the attached admonishment letter to the Democratic National Committee.

12. Approve the appropriate letters.

6/26/00
Date


Lawrence M. Noble
General Counsel

Attachments

1. Audit Referral Materials relating to Clinton/Gore '96 Primary Committee, Inc. (AR 99-07)
2. Section III.C. of the Clinton/Gore '96 Primary Committee's Response to the Exit Conference Memorandum

5. Admonishment letter to the Democratic National Committee

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel **KCS**
DATE: June 26, 2000
SUBJECT: Audit Referral 99-07 - First General
Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: JUNE 30, 2000

SUBJECT: Audit Referral 99-07 - First General Counsel's
Report dated June 26, 2000.

VAV

The above-captioned document was circulated to the Commission
on Tuesday, June 27, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for Tuesday,
July 11, 2000. Please notify us who will represent your Division before the
Commission on this matter.

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