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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Audit Referral: 02-14
Audit Referral Date: October 16, 2002
Date Activated: January 28, 2003

Expiration of Statute
of Limitations: March 1, 2004
Staff Member: Mark A. Goodin

SOURCE: Internally Generated Audit Referral

RESPONDENTS: Quayle 2000, Inc. and William R. Neale as Treasurer;
Campaign America, Inc. and Wesley T. Foster as Treasurer

**RELEVANT STATUTES
AND REGULATIONS¹:**

2 U.S.C. § 434(b)(2)(F)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(5)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
26 U.S.C. § 9038
11 C.F.R. § 100.5(g)
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 100.7(a)(4)
11 C.F.R. § 100.10
11 C.F.R. § 110.3(a)(1)
11 C.F.R. § 114.9(d)
11 C.F.R. § 116
11 C.F.R. § 9034.10 (proposed)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

¹ All of the facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act") or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

I. INTRODUCTION

The Commission audited Quayle 2000, Inc. ("Quayle 2000" or "the Committee") pursuant to 26 U.S.C. § 9038. Quayle 2000 was former Vice President Dan Quayle's principal campaign committee for the Republican Party's nomination for President in 2000. On September 20, 2002, the Commission approved the Audit Report on Quayle 2000.² The Audit Division referred this matter to the Office of General Counsel. A copy of the Audit Referral Memorandum is enclosed at Attachment 1.

During the audit fieldwork, the Audit staff determined that Quayle 2000 obtained certain goods from a political committee, but waited more than five months before paying for them. The activities of Quayle 2000 suggested possible violations of the contribution limitations under the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

Campaign America, Inc. ("Campaign America") is a multicandidate political committee.³ Attachment 1 at 2. On January 12, 1999, Campaign America contributed \$5,000 to Quayle 2000. *Id.* at 3 n.5. Subsequently, on July 28, 1999, Quayle 2000 paid Campaign America \$58,906 for furniture, computer and telephone equipment ("the goods").⁴ Although it paid for the goods in

² See Report of the Audit Division on Quayle 2000, Inc. and Quayle 2000 Compliance Committee, approved Sept. 20, 2002 ("Audit Report").

³ Former Vice President Quayle was the chairman of Campaign America in January 1999. Attachment 1 at 2.

⁴ Quayle 2000 initially issued a check to Campaign America for \$64,930; however, because the invoice for the goods contained a \$6,024 mathematical error, Campaign America subsequently returned \$6,024 to Quayle 2000. Attachment 1 at 2 n.3.

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1 July 1999, Quayle 2000 apparently took possession of and began using them in January 1999.

2 *Id.* at 2-3.

3 The Audit staff requested documentation from Quayle 2000 regarding its receipt of the
4 goods from Campaign America, including any purchase agreement, any invoices or billing
5 statements issued by Campaign America to Quayle 2000, and any memoranda or correspondence
6 relating thereto. *Id.* at 3. Quayle 2000 declined to supply such information. In its response to
7 the Preliminary Audit Report ("PAR"), Quayle 2000 stated that "[t]his is purely a legal matter,"
8 and that, based on various advisory opinions, "Campaign America did not make an excessive
9 contribution" to Quayle 2000. Attachment 2 at 2-3 (citing AO's 1990-26, 1989-4, and 1986-14).
10 The only document in the Committee's response to the PAR regarding this issue was a one-page
11 worksheet that listed Quayle 2000's debts owed to Campaign America and five other creditors,
12 as reported in the Committee's first- and second-quarter 1999 reports to the Commission.
13 Attachment 2 at 13.

14 **B. Law**

15 The Act places a limit of \$5,000 on aggregate contributions from a multicandidate
16 political committee to any candidate and his authorized committees. 2 U.S.C. § 441a(a)(2)(A).
17 It is unlawful for a candidate or political committee knowingly to accept any contribution in
18 violation of the contribution limitations. 2 U.S.C. § 441a(f). The term "contribution" includes
19 "anything of value made by any person for the purpose of influencing any election for Federal
20 office." 11 C.F.R. § 100.7(a)(1). Moreover, "anything of value includes all in-kind
21 contributions." 11 C.F.R. § 100.7(a)(1)(iii)(A).

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1 “The extension of credit by any person is a contribution unless the credit is extended in
2 the ordinary course of the person’s business and the terms are substantially similar to extensions
3 of credit to nonpolitical debtors that are of similar risk and size of obligation.” 11 C.F.R.
4 § 100.7(a)(4). The term “person” includes a “committee.” 11 C.F.R. § 100.10.

5 **C. Analysis**

6 The issue presented in this matter is whether Quayle 2000’s approximately five-month
7 delay in paying the cost of certain goods purchased from a political committee constituted the
8 receipt of an excessive contribution from that committee. As a multicandidate political
9 committee, Campaign America may not lawfully contribute, in the aggregate, more than \$5,000
10 to a candidate committee. 2 U.S.C. § 441a(a)(2)(A). Campaign America contributed this
11 maximum amount to Quayle 2000 on January 12, 1999. Campaign America’s transfer – also in
12 January 1999 – of \$58,906 worth of equipment and furniture to Quayle 2000 therefore raises the
13 issue of whether Campaign America provided an excessive contribution to Quayle 2000.⁵

14 Quayle 2000 contends that it did not receive a contribution from Campaign America, but
15 that Campaign America acted as a vendor to the Committee. Specifically, it argues that
16 Campaign America’s transfer of the goods should be treated in the same manner as a “sale of
17 assets by any vendor to the Committee which was paid in the ordinary course of business and on
18 a commercially reasonable basis.” Attachment 2 at 3. Quayle 2000 cites various advisory
19 opinions and regulations for the proposition that “the Commission recognizes that a committee
20 can be engaged in other than campaign purposes and act as a vendor.” *Id.* Quayle 2000 also

⁵ The Audit staff concluded that the amount that Quayle 2000 paid for these goods (\$58,906) appeared to be reasonable. Attachment 1 at 2 n.3. We have no information to suggest otherwise. Accordingly, we do not address the subsidiary issue of whether any contribution resulted from the provision of goods “at a charge which is less than the usual and normal charge for such goods....” 11 C.F.R. § 100.7(a)(1)(iii).

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1 submitted a schedule of debts to "other vendors" to demonstrate that it owed many debts of a
2 similar size that remained "outstanding for a similar period of time." *Id.*

3 Quayle 2000 implicitly acknowledges that Campaign America's transfer of goods
4 constituted an extension of credit, since Quayle 2000 eventually paid for the equipment and
5 furniture on July 28, 1999.⁶ Campaign America, as a person under the regulations, may extend
6 credit to Quayle 2000 without contribution consequences only if the credit is extended in the
7 "ordinary course of the person's business and the terms are substantially similar to extensions of
8 credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R.
9 § 100.7(a)(4).⁷ However, we do not have any information demonstrating that Campaign
10 America's transaction with Quayle 2000 was in the "ordinary course of [Campaign America's]
11 business."⁸ See 11 C.F.R. § 100.7(a)(4). Neither do we have any information that Campaign
12 America's terms of credit – zero down payment and full payment after five months – are

⁶ The advisory opinions cited by Quayle 2000 are only tangentially relevant to this matter. Although they relate to certain committee financial transactions, the advisory opinions specifically address whether the purchaser of certain committee assets would thereby make a contribution to the committee. See AO 1990-26 (sale of computer by terminating committee); AO 1989-4 (sale of goods from federal committee to state gubernatorial committee); AO 1986-14 (sale of van by ongoing committee to general public). Here, in contrast, the issue is not whether Quayle 2000 (the purchaser of goods) made a contribution to Campaign America, but whether Campaign America made an in-kind contribution to Quayle 2000 by waiting more than five months to receive payment for the goods. The regulations cited by Quayle 2000 are similarly unhelpful, because they address factual circumstances far different from a committee's purchase of assets from another committee. See 11 C.F.R. § 114.9(d) (requiring committees to reimburse corporations or labor organizations for the use of corporate or labor organization facilities within a "commercially reasonable time in the amount of the normal and usual rental charge"); 11 C.F.R. § 116 (addressing committee debt settlements, transactions with commercial vendors, and creditors' forgiveness of debts).

⁷ Cf. 11 C.F.R. §§ 116.1 and 116.3 (commercial vendor's extension of credit).

⁸ As noted above, Quayle 2000 provided to the Audit staff a schedule of debts that it owed to other creditors. Although this documentation may provide information regarding Quayle 2000's business practices, it is irrelevant to determine Campaign America's "ordinary course of [] business." See 11 C.F.R. § 100.7(a)(4).

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1 “substantially similar” to Campaign America’s “extensions of credit to nonpolitical debtors that
2 are of similar risk and size of obligation.” *See id.* Quayle 2000 refused to provide any
3 information requested by the Audit staff regarding the circumstances surrounding Campaign
4 America’s transfer of furniture and equipment to Quayle 2000. These facts, and the fact that the
5 candidate was also chairman of Campaign America at the time the goods were transferred,
6 suggest that the transaction may be a contribution, which is in excess of Campaign America’s
7 \$5,000 limit.⁹

8 This Office, therefore, recommends that the Commission find reason to believe that
9 Quayle 2000 and William R. Neale, as Treasurer, received an excessive in-kind contribution
10 from Campaign America in the amount of \$58,906 in violation of 2 U.S.C. § 441a(f).
11 Furthermore, this Office recommends that the Commission find reason to believe that Campaign
12 America and Wesley T. Foster, as Treasurer, made an excessive in-kind contribution to Quayle
13 2000 in the amount of \$58,906 in violation of 2 U.S.C. § 441a(a)(2)(A).

14 Quayle 2000 nevertheless made full payment to Campaign America within seven months
15 of the receipt of the goods. Accordingly, in consideration of the Commission’s resources and
16 priorities, this Office recommends that the Commission take no further action against Quayle
17 2000 and Campaign America in this matter.¹⁰

⁹ The Commission recently published a Notice of Proposed Rulemaking which addresses, among other things, the treatment as an in-kind contribution of certain expenditures by a multicandidate political committee for a qualified campaign expense of a Presidential candidate. *See Public Financing of Presidential Candidates and Nominating Conventions*, 68 Fed. Reg. 18484, 18498-99 (proposed Apr. 15, 2003) (to be codified at 11 C.F.R. pts. 104, *et al.*). If these proposed rules were adopted and applied retroactively to the activity described in this report, one would arrive at the same result: the multicandidate political committee made, and the Presidential candidate received, an excessive in-kind contribution. *See* 11 C.F.R. § 9034.10 (proposed).

¹⁰ A decision to take no further action would be consistent with the Commission’s position with respect to a similar issue in a previous matter. In MUR 3036, a Congressional candidate appeared to have

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III. RECOMMENDATIONS

1. Open a Matter Under Review.
2. Find reason to believe that Quayle 2000, Inc. and William R. Neale, as Treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions from Campaign America, Inc. in excess of the \$5,000 limitation, but take no further action.
3. Find reason to believe that Campaign America, Inc. and Wesley T. Foster, as Treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making contributions to Quayle 2000, Inc. in excess of the \$5,000 limitation, but take no further action.
4. Approve the appropriate letter(s).

Lawrence H. Norton
General Counsel

6/17/07
Date

BY:


Gregory R. Baker
Acting Associate General Counsel


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Assistant General Counsel


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received an extension of credit of up to \$2,130 from a corporation for an undetermined number of months. This individual reached the threshold amount of \$5,000 in contributions that triggered his status as a candidate on February 14, 1990; however, he dropped out of the race shortly thereafter (by April 5), and filed a termination report on July 19, 1990. The debt at issue was paid in full on April 20, 1990. The Commission found reason to believe that the respondents violated 2 U.S.C. § 441b(a) by receiving a prohibited corporate contribution in the form of an improper extension of credit; however, the Commission took no further action. Certification in MUR 3036 (Aug. 20, 1990). This Office recommended that the Commission make that decision because: (1) the amount of credit extended did not put the candidate over the \$5,000 threshold for candidacy; (2) the "amount of money involved" was "relatively small"; and (3) the debt was paid in full by an early date. First General Counsel's Report in MUR 3036 (Aug. 13, 1990). If the Commission decides to take no further action, it is unnecessary to address any potential affiliation between Quayle 2000 and Campaign America that might arise out of the candidate's chairmanship of the latter committee.