

SHARPE FOR CONGRESS

September 12, 1996

Lawrence M. Noble
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
6th Floor
Washington, D.C. 20463

Re: MUR 4434

Dear Mr. Noble:

The undersigned files this response to the FEC's request for information following the complaint filed by the Florida Democratic Party on August 8, 1996.

A. "Earmarking Violations"

After careful investigation into the status of Mr. Joe Kadow, general counsel for Outback Steakhouse, Inc., and his role in the 1994 Sharpe campaign, it is our firm belief that the campaign violated no federal election law as it pertains to earmarking regulations and subsequent reporting requirements. See 11 C.F.R. sec. 110.6(b)(2)(i). Kadow, as a member of the Sharpe campaign's Finance Committee, was indeed expressly authorized by the campaign to engage in fund-raising (see attachment).

Anecdotal reports by the Florida Democratic Party notwithstanding, Kadow occupied a formal, fund-raising role within the campaign. As a member of the Finance Committee, there is no question as to the legitimacy of his role in soliciting funds for the campaign. Federal election law appears to be clear on this particular point.

Therefore, it cannot be properly alleged by the FDP that Kadow failed to qualify as an exception to the earmarking regulations of the Act. Consequently, it is without foundation for the FDP to allege that contributions brought in by Kadow should have been counted against his own individual limit. The fact of his "significant position" within the campaign, as a member of the Finance Committee, refutes the FDP's assertion on the "earmarking" complaint.

B. "Filing Incomplete and Inaccurate FEC Reports"

The FDP, in its complaint, alleges a "pattern of incomplete disclosure of Outback related donations on finance reports provided to the Federal Election Commission." Without citing any particular number, the complaint alleges "numerous instances" where individual's occupations and addresses were misreported to the FEC.

Federal election law clearly requires that the campaign's treasurer employ his or her "best efforts" to obtain any missing information ("Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year" 11 C.F.R. sec. 104.7(b)(2).)

After alleging "numerous" instances of incomplete and inaccurate FEC reports, the FDP cites the "employer" information supplied by Mr. Mel Danker and argues that he is not "retired" as reported by the Sharpe 1994 campaign. We respond that Mr. Danker supplied the information that he was "retired" at the time of our request for information and that the campaign made "best efforts" to obtain that information. With regard to this particular "instance" cited by the FDP's complaint, they have not provided any evidence to suggest that the campaign acted with other than its "best efforts." The campaign provided the most accurate information available to it, as provided by Mr. Danker in 1994.

The second "instance" of incomplete / inaccurate FEC reports allegedly filed by the 1994 Sharpe campaign involves the contribution information for Kimberlee A. Brown, who contributed \$1,000 by check, dated November 3, 1994. The campaign received the check bearing her name at the top of the check and her signature on the paper. Clearly, on the face of it, this was the contribution of Kimberlee A. Brown, as reported by the campaign (see attached copy of Brown's contribution check). Federal law does not require the campaign to address the motives or political discussions of families where individual members choose to contribute to the campaign. Therefore, the information provided by the 1994 campaign regarding the report on the contribution of Brown appears complete and meets the requirements of the law.

The Florida Democratic Party appears to imply that female contributors should not have the opportunity to use their maiden name if they choose to contribute to the Sharpe campaign. Such a suggestion is simply ludicrous, as many women choose to use their maiden names in both personal and professional dealings. The 1994 campaign used the apparently complete information provided by Brown, thus meeting federal law reporting requirements in this instance.

The third "instance" of incomplete / inaccurate FEC reports alleges that the 1994 campaign treasurer, Richard Fontaine, who is not affiliated with the 1996 campaign, reported inaccurate addresses "in lieu of the contributor's real address." It would appear to the 1996 campaign that 1994 campaign treasurer, Richard Fontaine may have reported the "550 N. Reo St." address for a total of four contributions. Three of the four individuals work on the premises, which serves as Outback Steakhouse, Inc.'s corporate headquarters. Those three include owners Chris Sullivan, Bob Basham, and Tim Gannon. Clearly, it was proper to use their corporate address as a "mailing address," in keeping with the requirements of 11 C.F.R. sec. 104.7(b)(2). The law clearly requires a mailing address by which contributors can be found or identified ("source address"). In this case, it seems perfectly clear that Sullivan, Basham, and Gannon could be found or identified at that particular "mailing address." The FDP has utterly failed to demonstrate otherwise.

The FEC's "address of source" requirements appear to have been met in the fourth and final "instance" where "550 N. Reo St." was reported as the mailing address. Ms. Lauren Caine is employed by Outback Steakhouse, Inc., where she is employed at the headquarters and is thus discoverable at the same address as Sullivan, Basham, and Gannon.

Sharpe for Congress Campaign Plan 1994

I. Political Analysis

A. 4 way definition

1. Mark on Mark

- a. New idea reformer
- b. Conservative
- c. Grass roots campaign
- d. Youthful energy
- e. courageous

2. Mark on Gibbons

- a. too old
- b. too liberal
- c. been there too long
- d. special interests

3. Sam on Sam

- a. experienced
- b. powerful
- c. symbol of pride
- d. compassionate
- e. tradition
- f. constituents' friend

4. Sam on Mark

- a. too young
- b. no experience
- c. no clout / ability to be effective in DC
- d. no support
- e. nay sayer
- f. radical right

f. Pepin
g. Lorena Jacob

G. Individual Solicitation

a. expanded contacts through major donors.

H. Finance Committee

(linked to major donor solicitations and candidate)

1. Current Members

Jake Beckle
Mike Bedke
Bob Cromwell
JA Cone
Herb Doyle
Charlie Guy
Mrs Lorena Jacob
Joe Kadow
Chris Kise
Bob Lang
Marc Mandt
Dick Mandt
Sam Mudano
Dr. Rose Rosenelli
Sam Rachid

2. special stationery created

I. Friend Letters

1. letters written to contact another. (create guidelines).
2. Have someone from each precinct write to their buddies.
3. From major donor or organization.
4. Someone to head up efforts

J. Socials

1. residual values

KIMBERLEE A. BROWN ✓
KEVIN P. HARRON

1141

53 235/113

11/3 1994

Pay to the
order of

Jack K Sharpe for Congress \$1000.00

DNE MUDSANO + 000 Dollars

BayBank

Memo

K. K. Sharpe

NEW
I 7963
HMKR

523

CAMPAIGN GUIDE



**FOR CONGRESSIONAL
CANDIDATES AND
COMMITTEES**

4. How to Itemize Receipts

Committees must report receipts under the different categories listed on the Detailed Summary Page of Form 3. For each category, a committee must disclose the total for the current reporting period and the year-to-date total. In addition to reporting these totals, a committee often has to itemize receipts by providing supplemental information on supporting Schedules A, 104.3(a)(3) and (4).

A committee must use separate Schedules A for each category of receipts that must be itemized; the committee should not mix different categories of receipts on the same schedule. Itemized information includes:

- Name of source of receipt;
- Address of source;
- Employer of source (if source is an individual);
- Occupation of source (if source is an individual);
- Election to which a contribution or loan is attributable (indicated by checking "primary," "general" or "other" in the election designation box);
- Date of receipt;
- Amount of receipt; and
- Aggregate year-to-date total of all receipts (within the same category) from the same source.

104.3(a)(4) and 104.8(a).

If a donor is self-employed, that should be stated in the "Employer" space on Schedule A. If he or she is not employed, the space may be left blank, but the "Occupation" space should still be completed (e.g., "unemployed," "retired," "home-maker.") See "Treasurer's Best Efforts" on page 24 regarding steps that must be taken to obtain information about contributors.

5. When to Itemize Receipts

Regardless of Amount

Four types of receipts listed on the Detailed Summary Page must be itemized regardless of amount:

- Contributions from party committees;
- Contributions from other committees;
- Transfers; and
- Loans.

Itemization Threshold Exceeded

Four other types of receipts are subject to the \$200 threshold for itemization:

- Contributions from individuals/persons other than political committees;
- Contributions from the candidate;
- Offsets to operating expenditures; and
- Other receipts.

A receipt under these categories must be itemized if it:

- Exceeds \$200; or
- Aggregates over \$200 when added to other receipts (within the same category) received from the same source during a calendar year.

Aggregation: Calendar Year vs. Election

Note that authorized committees must aggregate contributions on a per-election basis when monitoring contribution limits. For purposes of reporting, however, committees aggregate contributions and other receipts on a calendar year basis.

Example of Aggregation

Suppose an individual makes two contributions to a principal campaign committee during an election year.

Primary Election Contribution. The donor contributes \$200 just before the candidate's primary election. Because it is undesignated, the contribution automatically applies to the primary limit. The contribution does not exceed \$200, so the committee includes the amount in its total of unitemized contributions (Line 11(a)(ii) on the Detailed Summary Page).

General Election Contribution. During the following reporting period, the same donor makes a \$10 contribution designated for the general election. This contribution must be itemized, since the aggregate total of the donor's contributions for the calendar year (\$210) now exceeds the \$200 threshold for itemization. When itemizing the \$10 contribution on Schedule A, the committee checks "General" in the election designation box and reports the donor's aggregate year-to-date total as \$210, even though \$200 applies to the primary and \$10 to the general.

6. Special Rules for Certain Receipts²

In-Kind Contributions

When determining whether to itemize an in-kind contribution, a committee should treat it the same as a monetary contribution. The only difference is that the amount of an in-kind contribution must also be included in the committee's total operating expenditures in order to avoid inflating cash on hand. An in-kind contribution must be itemized as an operating expenditure on Schedule B only if it has to be itemized as a contribution on Schedule A. (For information on how to value an in-kind contribution, see page 5.)

Appreciated Goods

When a committee receives an in-kind contribution whose value may appreciate over time, such as stock or artwork, special reporting rules apply:

- Itemize the initial gift, if necessary, as a memo entry on Schedule A (see "When to Itemize Receipts," above). Under "Amount," report the fair market value of the contribution on the date the item was received. Do not include that amount in the total for Line 11(a)(i) on the Detailed Summary Page. No itemization on Schedule B is necessary.
- Once the item is sold, report the sale price as a contribution on Line 11(a)(i) if the purchaser is known or as an "other receipt" on Line 15 if the purchaser is unknown. Itemize the transaction on Schedule A if necessary.

104.13(b). See also *Advisory Opinion* 1989-6.

2. See also the reporting information on contributions from the candidate (page 11); loans (page 29); earmarked contributions (Appendix C); contributions from partnerships (Appendix D); and joint fundraising receipts (Appendix E).