



FEDERAL ELECTION COMMISSION

May 24, 1993

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA *AK*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
MILDER FOR CONGRESS EXPLORATORY COMMITTEE

Attached please find a copy of the final audit report on Milder for Congress Exploratory Committee which was approved by the Commission on May 18, 1993.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library



FEDERAL ELECTION COMMISSION

MLF002066
A91-06

REPORT OF THE AUDIT DIVISION
ON
MILDER FOR CONGRESS EXPLORATORY COMMITTEE

I. Background

A. Overview

This report is based on an audit of Milder for Congress Exploratory Committee, ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this Section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the Clerk of the House of Representatives on December 27, 1989 and maintains its headquarters in Omaha, Nebraska. The audit covered the period from November 14, 1989, the inception date of the Committee's bank activity, through December 31, 1990. The Committee reported a beginning cash balance on November 14, 1989 of \$0; total receipts of \$631,841.53; total disbursements of \$625,386.47; and a closing cash balance on December 31, 1990 of \$6,449.06.^{1/}

This report is based on documents and workpapers supporting each of its factual statements. The documents and workpapers form part of the record upon which the Commission based its decisions on the matters in this report and were available to Commissioners and appropriate staff for review.

^{1/} The amounts do not foot because the Committee's reported beginning balance at January 1, 1990 was \$6.00 less than its reported ending balance at December 31, 1989.

B. Key Personnel

During the period covered by the audit, the Treasurer of the Committee was Mr. Ed Fogarty.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations

A. Apparent Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in relevant part, that it is unlawful for any corporation to make a contribution in connection with any election at which a Representative in Congress is to be voted for, or in connection with any primary election to select candidates for the foregoing office. In addition, this cite makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Section 100.7(A)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 C.F.R. §100.7(b), the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Section 103.3(b)(1) of Title 11 of the Code of Federal Regulations states that, contributions that present genuine questions as to whether they were made by corporations may be, within ten days of the treasurer's receipt, either deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate

account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

The Audit staff reviewed the Committee's contribution records for the period November 14, 1989 through December 31, 1990 and identified 34 contributions from 27 corporations, totaling \$8,693.82, which had not been refunded. Included in this total were four in-kind contributions, totaling \$1,618.82.

A Committee official stated that the Committee was very careful about asking contributors if questionable contributions were drawn on corporate accounts. She thought that some of the items noted as prohibited by the auditors were drawn on the contributors' professional drawing accounts containing their personal funds. She stated that it was the Committee's practice to review all contribution checks and if any appeared to be corporate, to return them undeposited. She added that it was possible that certain types of prohibited contributions, such as those from incorporated doctors or law firms, may have slipped through undetected.

The Audit staff found neither a separate account for the deposit of contributions which were possibly prohibited, nor a method to monitor an amount required to be kept in the Committee's regular accounts while the acceptability determination was being made.

A schedule of the prohibited contributions was sent to the Committee approximately two weeks after the end of fieldwork once the Audit staff had verified with the appropriate Secretaries of State that these entities were incorporated.

In the interim audit report the Audit staff recommended that the Committee take the following action:

- Provide evidence that the contributions discussed above were not prohibited; or
- Refund the prohibited contributions and provide evidence of such refunds (i.e., copies of the front and back of the negotiated refund checks); or
- Disclose the prohibited contributions as debts owed by the Committee on Schedule D (Debts and Obligations), if funds were not available to make such refunds.

In response to the interim audit report the Committee provided letters signed by contributors for several of the contributions from entities verified as corporations which stated that the contributions were drawn from a nonrepayable corporate drawing account and were therefore permissible. These letters, dated July 3, 1992, were sent to the contributors after the Committee received the interim audit report.

Based on our review of this documentation, the Audit staff concurs that the contributions covered by these letters are not prohibited. It is permissible for corporate employees to contribute by making personal draws against salary, profits or commissions. As a result, the Committee has materially complied with the interim audit report recommendation.

Recommendation #1

The Audit staff recommends no further action with regard to this matter.

B. Itemization of Contributions from Political Committees and An Unregistered Organization

Section 434(b)(3)(B) of Title 2 of the United States Code states that each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution. In addition, 2 U.S.C. §431(13)(B) defines "identification", for other than an individual, as the full name and address of such person.

Section 100.7(A)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 C.F.R. §100.7(b), the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Furthermore, 11 C.F.R. §104.13(a) states that each in-kind contribution be reported as both a contribution and an expenditure.

The Committee's receipts records were reviewed to determine whether all contributions from political committees were itemized. The Audit staff determined that 25 contributions from 22 committees and an unregistered organization, totaling \$12,755.80, had not been itemized on Schedule A (Itemized Receipts). Included in this total were seven in-kind contributions, totaling \$1,405.14, from four political committees and one unregistered organization, which in addition to not being itemized on Schedule A were also not itemized on Schedule B (Itemized Disbursements) as required by 11 C.F.R. §104.13.

The Audit staff further determined that eleven in-kind contributions from three political committees, totaling \$4,257.36, were correctly itemized by the Committee on Schedule A, but the corresponding Schedule B entries were omitted.

At the exit conference, the Committee was provided with a schedule of the contributions from political committees

which were not itemized correctly. Committee officials provided no explanation for these omissions.

In the interim audit report the Audit staff recommended that the Committee file amended Schedule A's (Itemized Receipts) and Schedule B's (Itemized Disbursements) correcting these omissions. In response to the interim audit report, the Committee filed the requested amended reports.

Recommendation #2

The Audit staff recommends no further action with regard to this matter.

C. Misstatement of Financial Activity

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in part, that each report shall disclose the amount of cash on hand at the beginning of each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff reconciled the Committee's reported activity to its bank activity from November 14, 1989 through December 31, 1990. The reconciliation revealed that the Committee overstated its reported cash balance as of December 31, 1990 by \$9,066.63 (net).

The components of this ending cash balance misstatement are as follows:

1990 Ending Balance as Reported		\$6,449.06
• Sixteen In-Kind Contributions not included in 1990 Reported Disbursements ^{2/}	< 6,257.36>	
• NSF Contributor Checks Not Adjusted Out of 1990 Reported Receipts ^{3/}	< 2,500.00>	
• Over Reported Contribution	< 500.00>	
• Unreported Contributions and Interest Earned	240.09	
• Unreported Bank Charges	< 39.46>	
• Unexplained Difference	<u>.10</u>	
Subtotal		<u><9,066.63></u>
Adjusted 1990 Ending Balance		<u><2,617.57></u>

At the exit conference the Committee was provided with a listing of the in-kind contributions not included in reported Disbursements. Committee officials did not provide any explanations for these misstatements.

In the interim audit report the Audit staff recommended that the Committee amend its most recently filed report (1991 Year End Report) to correct this ending cash balance misstatement. In response to the interim audit report, the Committee filed the requested amended report.

Recommendation # 3

The Audit staff recommends no further action with regard to this matter.

^{2/} Eleven of these sixteen in-kind contributions, totaling \$4,257.36, were from three political committees and were not itemized on Schedule B (Itemized Disbursements). (See Finding II.B.)

^{3/} The two contributor checks which comprised this \$2,500 were reported as clearing on 1 29 91 per the Committee's 1991 Mid-Year Report.

D. Disclosure of Loan from the Candidate

Section 432(e)(2) of Title 2 of the United States Code states, in relevant part, that any candidate for Federal office who receives a loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered as having received the loan, or as having made the disbursement, as an agent of the authorized committee.

Section 104.3(a)(4)(iv) of Title 11 of the Code of Federal Regulations requires the identification of each contributor and the aggregate year-to-date total for such contributor, for each person who makes a loan to the reporting committee or to the candidate acting as an agent of the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, the date such loan was made and the amount or value of such loan. The Act at 2 U.S.C. §431(13)(B) define "identification", for other than an individual, as the full name and address of such person.

In accordance with 11 C.F.R. §104.3(a)(3)(vii)(B) and §104.3(b)(2)(iii)(A) an authorized committee of a candidate for Federal office shall report all loans made, guaranteed, or endorsed by a candidate to his or her committee, as well as all repayments of such loans.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 C.F.R. §100.7(b), the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Furthermore, 11 C.F.R. §104.13(a) states that each in-kind contribution be reported as both a contribution and an expenditure.

On May 9, 1990, the Candidate obtained a \$10,000 loan from the Bank of Nebraska, the proceeds of which were deposited into the Committee's bank account on that same date. According to the loan agreement, the original loan had a 13% interest rate and was due on 6/8/90 (30 days). The finance charge for the initial 30 day term was \$132.12. The Audit staff was provided documentation in support of one loan renewal from 7/12/90 through 8/11/90, but no additional loan documentation was made available. The Committee repaid \$10,000 to the Candidate by check on 9/28/90.

The Committee disclosed the receipt of this loan on a Schedule A (Itemized Receipts) and Schedule C (Loans) with the source of the loan disclosed as the Candidate instead of

correctly disclosing the bank as the source of the loan with the Candidate as endorser or guarantor. The Committee disclosed the repayment of the loan to the Candidate on a Schedule C instead of to the bank but did not itemize the repayment on its Schedule B (Itemized Disbursements). It should be noted that the Committee initially disclosed a repayment to the Candidate on its FEC report but lined through it on the report.

No documentation relating to the payment of interest associated with this loan was made available to the auditors. A Committee official stated that the Candidate paid all the interest on the loan from her personal funds. The Committee did not report any in-kind contributions from the Candidate for these interest payments.

At the exit conference, Committee officials provided no explanation for these discrepancies.

In the interim audit report the Audit staff recommended that the Committee file amended Schedule A's (Itemized Receipts), Schedule B's (Itemized Disbursements), Schedule C's (Loans) and Detailed Summary Pages (FEC Form 3, Page 2) correcting the above noted problems. In response to the interim audit report, the Committee filed amended reports which materially corrected these omissions.

Recommendation #4

The Audit staff recommends no further action with regard to this matter.

E. Reporting of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code states that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

Section 104.11 of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. In addition, a debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first. Any loan, debt or obligation, the amount of which is over \$500, shall be reported as of the time of the transaction.

Our review of Committee invoices and related payments revealed 13 debts, totaling \$14,391.25, which were outstanding

at the close of four 1990 reporting periods and not disclosed on Schedule D (Debts and Obligations Owed by a Committee).

A listing of these items was provided to the Committee at the exit conference. Committee officials provided no explanation for these omissions.

In the interim audit report the Audit staff recommended that the Committee file amended Schedule D's to correct these omissions. In response to the interim audit report, the Committee filed amended reports which materially corrected these omissions.

Recommendation #5

The Audit staff recommends no further action with regard to this matter.

F. Matter Referred to the Office of General Counsel

A certain matter noted during the audit has been referred to the Commission's Office of General Counsel.