



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 2002

MEMORANDUM

AGENDA ITEM

For Meeting of: 4-11-02

TO: The Commissioners

THROUGH: James A. Pehrkon
Staff Director

Robert J. Costa
Deputy Staff Director

FROM: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Martin L. Favin
Audit Manager

Gary L. Hache
Lead Auditor

SUBJECT: Report of the Audit Division on McCain 2000, Inc. and McCain 2000
Compliance Committee, Inc.

Attached for your review and approval is the subject report, along with the legal analysis prepared by the Office of General Counsel. The Committee submitted additional documentation to substantiate the recovery of the asset discussed in Counsel's legal analysis.

Recommendation

The Audit staff recommends that the report be approved.

It is requested that this report be placed on the next Open Session agenda. If you have any questions, please contact Gary Hache or Marty Favin at extension 1200.

Attachments:

- Report of the Audit Division on McCain 2000, Inc. and McCain 2000 Compliance Committee, Inc.
- Committee Response to the Preliminary Audit Report dated December 18, 2001
- Legal Analysis prepared by the Office of General Counsel dated March 15, 2002



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
MCCAIN 2000, INC. AND
MCCAIN 2000 COMPLIANCE COMMITTEE, INC.**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the McCain 2000, Inc. (the Committee) and McCain 2000 Compliance Committee, Inc. (the Compliance Committee). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time, as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

B. AUDIT COVERAGE

The audit covered the period from the Committee's first bank transaction, January 5, 1999, through June 30, 2000. The Committee reported an opening cash balance of \$-0-, total receipts of \$58,012,969, total disbursements of \$57,684,859 and a closing cash balance of \$328,110. In addition, a limited review of the Committee's financial activity and disclosure reports for the period from July 1, 2000 through December 31, 2001 was conducted to determine the Committee's matching fund entitlement based on its financial position.

The audit of the Compliance Committee covered the period from its inception, June 16, 1999, through December 31, 2000. During this period, the

Compliance Committee reported an opening cash balance of \$-0-, total receipts of \$69,718, total disbursements of \$69,718 and a closing cash balance of \$-0-.¹ In addition, a limited review of the Compliance Committee's financial activity and disclosure reports for the period from January 1, 2001 through March 31, 2001 was conducted.

C. CAMPAIGN ORGANIZATION

The Committee and the Compliance Committee maintain their headquarters office in Alexandria, Virginia. Initially, the Treasurer of both the Committee and the Compliance Committee was Mr. Max Fose; Ms. Carla Eudy became Treasurer of the Committee on May 19, 2000, and Treasurer of the Compliance Committee on April 26, 2001.

The John McCain for President Exploratory Committee registered with the Federal Election Commission on January 7, 1999 as the principal campaign committee of Senator John S. McCain (the Candidate), a candidate for the Republican Party's nomination for the office of President of the United States. On April 14, 1999 the Committee's name was changed to the name currently in use. The Compliance Committee registered with the Federal Election Commission on June 16, 1999.

During the audit period, both the Committee and the Compliance Committee maintained depositories in the District of Columbia and Phoenix, Arizona. To handle its financial activity, the Committee utilized 18 bank accounts. From these accounts the campaign made approximately 8,800 disbursements. In addition, the Committee received contributions totaling approximately \$28,450,000, from approximately 154,700 contributors. To handle its financial activity, the Compliance Committee used 1 bank account. From this account, the Compliance Committee made approximately 250 disbursements. The Compliance Committee received 3 contributions, totaling \$3,000 and approximately \$69,700 in contributions redesignated by the contributor from the Candidate's primary campaign.

The Candidate was determined eligible to receive matching funds on July 1, 1999. The Committee made 17 matching fund requests totaling \$14,891,153 and received \$14,777,748 from the United States Treasury. This amount represents 87% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that Senator McCain's candidacy ended on March 9, 2000, the date on which he ceased to be an active candidate. On April 2, 2001, the Committee received its final matching fund payment to defray expenses and to help defray the cost of winding down the campaign.

¹ See Misstatement of Financial Activity at Section II.A.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of expenditures made by the Committee to determine if they were qualified or non-qualified campaign expenses, the audit of the committees covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.A.);
7. adequate recordkeeping for campaign transactions;
8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the Committee, to disclose its financial condition and to establish continuing matching fund entitlement (see Finding III.B.);
9. the Committee's compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation (see Findings III.A. and III.C.).

As part of the Commission's standard audit process, an inventory of campaign records is conducted prior to the audit fieldwork. This inventory is conducted to determine if the committee's records are materially complete and in an auditable state. The records were found to be materially complete and the audit fieldwork commenced.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in the audit report in an enforcement action.

II. FINDINGS AND RECOMMENDATIONS - NON-REPAYMENT MATTERS²

A. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1) and (2) 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 and the total amount of all receipts for the reporting period and the calendar year.

The Audit staff's reconciliation of the Compliance Committee's reported financial activity to its bank activity revealed that the amounts reported for receipts and ending cash were materially misstated. Reported total receipts of \$69,718 were understated by \$3,053, mainly due to \$3,000 of unreported contributions from three individuals. The Compliance Committee reported an ending cash balance at December 31, 2000 of \$-0-, an understatement of \$2,968. The misstatement was mainly due to the understatement of receipts noted above.

At the conference held subsequent to the end of fieldwork, the Audit staff provided the Compliance Committee with a copy of the bank reconciliation. Compliance Committee officials stated that amended disclosure reports had been prepared to correct the misstatements and refunds of the contributions had been made. Cashier's checks were purchased on March 7, 2001 by the Compliance Committee to refund the contributions and on March 15, 2001 the Compliance Committee filed amended disclosure reports, which materially corrected the misstatements.

In the Preliminary Audit Report (the PAR), the Audit staff recommended no further action.

III. FINDINGS AND RECOMMENDATIONS - AMOUNTS DUE TO THE U.S. TREASURY

A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

Section 9032(9) of Title 26 of the United States Code defines, in part, the term "qualified campaign expense" as a purchase or payment incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination, and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

² No material non-compliance was detected with respect to non-repayment matters involving the audit of the Candidate's principal campaign committee.

Section 9033.11(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses.

Section 9034.4(a)(1) of Title 11 of the Code of Federal Regulations states that all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9034.4(a)(3) of Title 11 of the Code of Federal Regulations states, in part, that costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any expenses incurred after a candidate's date of ineligibility under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3).

Section 9034.4(b)(8) of Title 11 of the Code of Federal Regulations states that the cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

Section 9038.2(a)(2) of Title 11 of the Code of Federal Regulations states that the Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but no later than three years after the close of the matching fund period. The Commission's issuance of the audit report to the candidate under 11 CFR 9038.1(d) will constitute notification for purposes of this section.

Sections 9038.2(b)(2)(i) and (iii) of Title 11 of the Code of Federal Regulations state, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. The amount of any repayment under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds

certified to the candidate bears to total deposits, as of 90 days after the candidate's date of ineligibility.

The Committee provided the Audit staff with a database of its disbursements that covered the period from inception through September 6, 2000. The Audit staff conducted various reviews that resulted in the identification of payments to individuals and vendors that appeared to be non-qualified campaign expenses as categorized below:

1. Apparent Non-Campaign Related Expenses

The Committee used an American Express credit card to pay for campaign related travel expenses. The Audit staff reviewed charges to the Committee's credit card for the period April 1, 2000, through September 1, 2000, and identified charges totaling \$57,966 that appeared to be non-campaign related. The charges were incurred for purposes that could not be associated with the Candidate's campaign for the nomination or qualified winding down expenses. According to Allen Haywood, Assistant Treasurer, the majority of these charges were related to the Candidate's leadership PAC, Straight Talk America PAC³ (the PAC). The PAC used the credit card subsequent to the Candidate's date of ineligibility for travel related expenses. These charges were incurred during the period of time between when the PAC applied for and was issued its own credit card.

The Audit staff provided the Committee a detailed listing of these expenses at the conference held subsequent to the end of fieldwork. In its response to the exit conference, the Committee provided documentation to evidence reimbursements for a portion of these expenses totaling \$49,724, including \$41,870 received from the PAC for the charges incurred on its behalf. After applying the reimbursements, the remaining non-campaign related expenses totaled \$8,242.

In addition, the Audit staff identified payments to individuals and vendors totaling \$12,844 that appeared to be either duplicate payments of qualified campaign expenses or non-campaign related disbursements. The duplicate payments, totaling \$3,164, include a reimbursement (\$2,148) of expenses to an individual and a vendor for the same goods or service. Also, a vendor was reimbursed twice for the same travel expenses. The non-campaign related disbursements, totaling \$9,680, include payments of \$5,680 to reimburse vendors for equipment lost by campaign staff and \$4,000 to Custom Coach Corporation for the purchase, removal and replacement of the "captain's chair" used by the Candidate on his campaign bus, the "Straight Talk Express."

The Audit staff provided the Committee a detailed listing of these expenditures at the exit conference held subsequent to the end of fieldwork. In its response, the Committee provided documentation to evidence reimbursement of \$4,000

³ Straight Talk America PAC filed a Statement of Organization with the Commission on March 20, 2000.

from the PAC for the "captain's chair." After applying the reimbursement, the remaining duplicate payments and non-campaign related expenses total \$8,844.

In the PAR, the Audit staff recommended that the Committee provide documentation to demonstrate that the expenditures noted above are qualified campaign expenses or present evidence that the Committee has been reimbursed for these expenditures. Also, the Audit staff recommended that the Committee provide documentation to demonstrate that the leased equipment noted above is accounted for or present evidence that demonstrates that the Committee made conscientious efforts to safeguard the missing equipment, including but not limited to, whether the Committee sought or obtained insurance on the items and whether the Committee filed a police report detailing the type of equipment and value of items that were lost or missing. Absent such evidence, the Audit staff would recommend that the Commission make a determination that the Committee make a pro rata repayment of \$5,653 $[(\$8,242 + \$8,844) \times .33083]^4$ to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

In response to the non-campaign related credit card expenditures (\$8,242), the Committee stated that it concurred that these charges are not campaign related. The Committee provided documentation to evidence receiving reimbursement for \$7,884, which reduced the non-campaign related credit card expenditures to \$358.

In response to the duplicate payments and other non-campaign related expenses (\$8,844), the Committee submitted documentation to evidence reimbursement for the duplicate payment in the amount of \$2,148. Also, the documentation provided substantiated that the remaining duplicate payment for travel expenses of \$1,016 was, in fact, payment for a second person traveling with the Candidate. Non-campaign related expenses, totaling \$5,680 $(\$8,844 - \$2,148 - \$1,016)$, remain unresolved.

Recommendation #1

The Audit staff recommends that the Commission determine that \$1,998 $[(\$358 + \$5,680) \times .33083]$ is repayable to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

2. **Lost or Stolen Equipment**

The Audit staff's review of fixed assets determined that the Committee had purchased computers, printers and fax machines with a total purchase price of \$132,194. The Committee received \$25,563 from the sale of equipment with a cost basis of \$67,301. An inventory of the equipment remaining on hand revealed that

⁴ This figure (.33083) represents the Committee's repayment ratio as calculated pursuant to 11 CFR §9038.2(b)(2)(iii)(B).

equipment with a cost basis of \$55,373 was not accounted for. The Fair Market Value (FMV) of the missing equipment was calculated at \$24,736⁵.

At the conference held subsequent to the end of fieldwork, the Audit staff provided the Committee with a detailed listing of the missing assets. The Committee had no response.

In the PAR, the Audit staff recommended that the Committee provide documentation to demonstrate that the equipment noted above is accounted for or present evidence that demonstrates that the Committee made conscientious efforts to safeguard the missing equipment, including but not limited to, whether the Committee sought or obtained insurance on the items and whether the Committee filed a police report detailing the type of equipment and value of items that were lost or missing. Absent such evidence, the PAR explained that the Audit staff would recommend that the Commission make a determination that the Committee make a pro rata repayment of \$8,183 [$\$24,736 \text{ (FMV)} \times .33083$] to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

In response to the lost equipment, the Committee submitted documentation sufficient to evidence the recovery of one laptop computer with a fair market value of \$753 (the value assigned by the Audit staff in the PAR), and was in the process of selling the asset. The recovered item reduces the fair market value of lost equipment to \$23,983.

Recommendation #2

The Audit staff recommends that the Commission determine that \$7,934 [$\$23,983 \text{ (FMV)} \times .33083$] is repayable to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

B. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

In addition, Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may

⁵ Based on the market value received from the sale of equipment, the Audit staff estimated that the Fair Market Value (FMV) of computers was 45% of cost, and the FMV of printers and fax machines was 40% of cost.

In addition, Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

The Candidate's date of ineligibility (DOI) was March 9, 2000. The Audit staff reviewed the Committee's financial activity through December 31, 2001, analyzed estimated winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations.

The Audit staff's Statement of Net Outstanding Campaign Obligations appears below:

McCain 2000, Inc.
Statement of Net Outstanding Campaign Obligations
 As of March 9, 2000
 Prepared as of December 31, 2001

Assets

Cash in Bank	\$ 228,174	(a)	
Accounts Receivable	1,419,049		
Capital Assets (at Fair Market Value)	<u>28,649</u>		
Total Assets			\$ 1,675,872

Liabilities

Disbursements for Qualified Campaign Expenses and Winding Down Costs paid 3/10/00 to 12/31/01	\$ 8,741,369	(b)	
Estimated Winding Down Costs (1/1/02 to 6/30/02)	36,800	(c)	
Loan Payable at 3/9/00	6,087,473		
Amounts Payable to U. S. Treasury for State-Dated Checks	85,017		
Total Liabilities			\$ 14,950,659
Net Outstanding Campaign Obligations - Deficit			<u>(\$ 13,274,787)</u>

Footnotes to NOCO Statement:

- (a) Adjusted for state-dated checks totaling \$34,092 issued prior to DOI.
- (b) Apparent non-qualified campaign expenses of \$28,975 and post DOI state-dated checks of \$61,925 were excluded pursuant to 11 CFR 9034.5(b)(1).
- (c) Audit staff estimate based on Committee's disclosure reports, estimates and prior Actual expenses will be compared to estimates with adjustments as necessary.

Shown below are adjustments for funds received after March 9, 2000 through December 31, 2001 based on the most current financial information available at the close of fieldwork:

Net Outstanding Campaign Obligations (Deficit) as of 3/9/00	(\$ 13,274,787)
Matching Funds Received 3/10/00 to 12/31/01	12,576,435
Private Contributions Received 3/10/00 to 12/31/01	587,456
Interest Received 3/10/00 to 12/31/01	<u>8,776</u>
Remaining Net Outstanding Campaign Obligations (Deficit) as of 12/31/01	(\$ <u>102,120</u>)

As presented above, the Committee has not received matching fund payments in excess of its entitlement.

C. STALE-DATED CHECKS

Sections 9007.6 and 9038.6 of Title 11 of the Code of Federal Regulations state that if the committee has checks outstanding to creditors or contributions that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff identified 200 stale-dated checks totaling \$97,017 issued by the Committee from its Contribution Refund account and 19 stale-dated checks totaling \$4,088 issued by the Compliance Committee. The checks were dated between May 17, 1999 and August 1, 2000 and had not cleared the bank as of March 31, 2001.

This matter was discussed at the conference held subsequent to the close of fieldwork and the Committee was provided with a detailed schedule of stale-dated checks. The Committee had no response.

In the PAR, the Audit staff recommended that the Committee provide evidence that the checks are not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks are voided and that no Committee obligation exists. Absent such evidence, the PAR explained that the Audit staff would recommend that the Commission make a determination that \$97,017 in Committee stale-dated checks and \$4,088 in Compliance Committee stale-dated checks is payable to the U.S. Treasury.

In response to the PAR, the Committee submitted documentation to evidence the re-issuance of contributor refund checks, by bank check, totaling \$12,000.

Also, the Committee indicated that the remaining stale-dated Committee checks totaling \$85,017 and Compliance Committee checks of \$4,088, remain outstanding and will be paid to the U.S. Treasury.

Recommendation #3

The Audit staff recommends that the Commission determine that \$85,017 in Committee stale-dated checks and \$4,088 in Compliance Committee stale-dated checks are payable to the U.S. Treasury.

IV. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY

Finding III.A.1.	Apparent Non-Qualified Campaign Expenses	\$ 1,998
Finding III.A.2.	Lost or Missing Equipment	7,934
Finding III.C.	Stale-Dated Checks – Committee	85,017
	Compliance Committee	<u>4,088</u>
	Total	<u>\$ 99,037</u>



December 18, 2001

Mr. Robert J. Costa
Deputy Staff Director
Audit Division
Federal Election Commission
999 E St. NW
Washington, DC 20463

RECEIVED
FEC MAIL ROOM
2001 DEC 18 P 4: 32

Dear Mr. Costa:

McCain 2000, Inc. (The Committee) and the McCain 2000 Compliance Committee, Inc. are responding by this letter to the Preliminary Audit Report of October 11, 2001. We address the repayment items of non-qualified expenses, lost or missing equipment, and stale-dated checks in the pages that follow, and where possible, provide additional documentation that may resolve questions concerning some of these items.

You can contact Allen Haywood, our Assistant Treasurer, in my office at (202) 682-5390, fax number (202) 682-5395 if you have any questions or need any additional information regarding these outstanding items. I look forward to the successful conclusion of this audit in the near future.

Sincerely,

Carla S. Eudy
Carla Eudy

Treasurer, McCain 2000, Inc. and McCain Compliance Committee, Inc.

Finding III.A.1 Apparent Non-Qualified Campaign Expenses \$5,653
 (\$8,242 + \$8,844) x .33083

\$7,011 Continental Airlines-Israel
 \$670 Hilton Hotels Tel Aviv
\$561 Rosenthal Chevrolet
 \$8,242

McCain 2000, Inc. concurs that these charges are not campaign related. Half of the \$7,011 expense (\$3,505.40) has been reimbursed to the Committee by Straight Talk America PAC in check #1748 for \$30,894.41 deposited on March 27, 2001. The charge for \$670.35 for the Hilton Hotel in Tel Aviv was paid by Straight Talk America directly to American Express in check #1207 issued on July 24, 2000 for \$4,705.17. However, American Express mistakenly applied this payment to the account of Straight Talk America rather than to the Committee's American Express account. Straight Talk America reimbursed McCain 2000 for \$4,705.17 (which includes the \$670.35 for the Hilton Tel Aviv) in check #1678 dated February 20, 2001. The remaining \$3,505.40 was reimbursed by Straight Talk America PAC to the Committee on December 18, 2001. The \$561 expense to Rosenthal Chevrolet was not authorized by the Committee, but we have been unsuccessful in our attempts to have this charge reversed. This leaves \$561 remaining out of the \$8,242.

Of the \$8,844 in question, the Committee is still pursuing a reimbursement from John Weaver or Campaign Services Group for the \$2,148 duplicate payment, but has to date not yet received a check. The payment of \$1,016 to US West was not a duplicate payment, but rather payment for a second passenger, Caria Eudy, who was added to the flight to accompany Senator McCain at the last minute. Removing the \$1,016 item reduces the total in this portion from \$8,844 to \$7,828. Assuming these explanations are accepted as presented, the repayment from these items is reduced from \$5,653 to \$2,775.

Finding III.A.2 Lost or Stolen Equipment Fair Market Value \$24,736

The Committee has recovered one Acer 512T Travelmate computer with a fair market value of \$753, and is in the process of selling this laptop computer. This recovered item reduces the \$24,736 to \$23,983, and the resulting repayment amount is reduced from \$8,183 to \$7,934. The total repayment for all matters excluding stale-dated checks is now \$10,709, according to the Committee's calculations.

Finding III.C Stale-Dated Checks \$97,017 in Contribution Refunds

The Committee has issued bank checks to the twelve individuals listed below. The remaining \$85,017 remains outstanding, and will be re-paid to the U.S. Treasury.

Roger Zuckerman	George Heaton	Dorothy Gerstell	John Regis
Stanley Black	Harry Sloan	Susan Keenan	James Radley
Michelle Mathews	Beatrice Manice	Henry Sullivan	Tom Rhoden

Compliance Committee checks totaling \$4,088 remain outstanding, and will be re-paid to the U.S. Treasury.

March 5, 2002

Mr. Allen Haywood
McCain 2000, Inc.
Box 25382
Alexandria, VA 22313

Mr. Gary Hache
Federal Election Commission
999 E St. NW
Washington, DC 20463

Affidavit of Allen Haywood, Assistant Treasurer, McCain 2000, Inc.

On behalf of McCain 2000, Inc., I verify that the McCain campaign has recovered the laptop computer Acer 512T, serial number 9145C0190592900074K, referenced as asset VA063, has it currently in our possession, and is attempting to sell it.



Allen Haywood
Assistant Treasurer, McCain 2000, Inc.

3-5-02

Date




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION
MAR 18 9 52 AM '02


March 15, 2002

MEMORANDUM


TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Gregory R. Baker 
Acting Associate General Counsel

Lorenzo Holloway 
Assistant General Counsel

Michelle E. Abellera 
Attorney

SUBJECT: Report of the Audit Division on McCain 2000, Inc. and McCain 2000
Compliance Committee, Inc. (LRA #550)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Report of the Audit Division on McCain 2000, Inc. (the "Committee") and McCain 2000 Compliance Committee, Inc. (the "Compliance Committee"), which was submitted to this Office on February 7, 2002.¹ This memorandum presents our comments on the proposed Report. Generally, we concur with any findings not specifically discussed in this memorandum. If you have any questions concerning our comments, please contact Michelle E. Abellera, the attorney assigned to this review.

¹ This Office recommends that the Commission consider the proposed Report in open session because the document does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

II. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (III.A.1.-2.)²

This Office concurs with the Audit Division's conclusion that the Committee's lost assets constitute non-qualified campaign expenses. However, this Office believes that the lost equipment finding should be revised to include additional information that explains the reduction in the repayment from the Preliminary Audit Report (PAR).

The PAR recommended that the Committee provide documentation to demonstrate that the missing equipment was accounted for or present evidence that demonstrated that the Committee made conscientious efforts to safeguard the missing equipment. Absent such evidence, the PAR explained that the Audit staff would recommend the Commission make a determination that the Committee make a pro rata payment of \$8,183 [$\$24,736$ fair market value (FMV) \times $.33083$]. In response, the Committee stated that it had recovered one laptop and was in the process of selling the asset.³ The Audit staff determined the FMV of the recovered laptop to be \$753 and reduced the FMV of the lost equipment by \$249 ($\$753 \times .33083$).⁴

In determining whether lost or missing equipment is considered a nonqualified campaign expense, the Commission considers whether committees have demonstrated compliance with reasonable safeguards, such as filing police reports and contracting for insurance. 11 C.F.R. § 9034.4(b)(8). However, the Committee did not provide evidence to support its compliance with the safeguards or provide documentation to demonstrate the previously missing laptop was recovered. The Office of General Counsel recognizes that the amount at issue is not significant. However, the Committee maintains the burden of demonstrating that its expenditures are qualified campaign expenses. See 11 C.F.R. § 9033.11(a). Furthermore, the Committee must obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses. *Id.* If the Committee is not required to submit evidence supporting its position that the laptop was recovered, then this is a departure from precedent that requires committees to demonstrate that their expenses are qualified campaign expenses. A departure from the Commission's prior procedure requires an explanation. *Bush-Quayle '92 v. Federal Election Commission*, 104 F.3d 448, 453 (D.C.Cir. 1992). Therefore, we recommend that the Audit Division revise the report to explain why the Committee's statement is sufficient to reduce the repayment.

² The parenthetical reference corresponds to the section number in the proposed Report.

³ The Committee's statement regarding the laptop was not submitted under oath.

⁴ It is this Office's understanding that the Audit staff will not seek additional information from the Committee because of the insignificant amount involved with the recovered laptop. The Commission recognized the concept of significant amounts as a valid consideration in dealing with lost and missing equipment. See *Explanation and Justification for Regulations on Public Financing of Presidential Primary and General Election Candidates*, 60 Fed. Reg. 31854, 58 (1995). However, this reasoning should be stated in the report without citing an actual dollar amount to trigger the significance of the lost or missing equipment. *Id.*