



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463


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February 24, 2000


**MEMORANDUM**


**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director 

**FROM:** Lawrence M. Noble  
General Counsel 

Kim Leslie Bright   
Associate General Counsel

Rhonda J. Vosdinh   
Assistant General Counsel

Andre G. Pineda   
Attorney

**AGENDA ITEM**  
For Meeting of: 3-16-00

**SUBJECT:** President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. -  
Repayment Determination and Disgorgement Determination  
(LRA #529)

**I. INTRODUCTION**

On July 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must repay \$10,948.25 to the United States Treasury for receiving funds in excess of entitlement. 26 U.S.C. § 9038(b)(1) and 11 C.F.R. § 9038.2(b)(1)(iii). On the same date, the Commission also determined that the Committee must disgorge \$25,000 to the United States Treasury. The disgorgement amount was equal to 25 contributions made to the Committee that were identified as being part of a corporate contribution scheme involving Future Tech International, Inc. ("Future Tech") and its corporate officers. Notice of Repayment Determination and Disgorgement Determination for President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc., at pp. 3-6. By letter dated August 10, 1999, the Office of General Counsel notified the Committee of these determinations.

On October 8, 1999, the Office of General Counsel received a letter from the Committee enclosing two checks made payable to the United States Treasury: one check was for \$10,948.25 (the repayment amount); the other check was for \$25,000 (the disgorgement amount).<sup>1</sup> The Committee's letter states:

While we are making the disgorgement payment to the Treasury pursuant to the Commission's direction, we are somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of the lawsuit that has been brought related to a Commission disgorgement order to another 1996 presidential campaign. We assume that the Commission would defend the Committee should any legal action be brought against the Committee to seek return of these funds to the contributor.

Attachment I at 1.

This memorandum analyzes the disgorgement issue and proposes a response to the Committee regarding its disgorgement payment.

## II. ANALYSIS

Although the Committee does not identify the lawsuit, it appears that it is referring to *Fireman v. United States*, 44 Fed. Cl. 528 (1999). Fireman had filed a claim against the United States to get back \$69,000 that the Dole for President Committee, Inc. ("Dole Committee") and the Dole for President Compliance Committee, Inc. ("the Dole GELAC") had disgorged to the United States Treasury pursuant to Advisory Opinion ("AO") 1996-5. In that AO, the Commission advised the Dole Committee and the Dole GELAC that, because collateral legal proceedings identified the source of unlawful contributions, the Dole Committees could either refund the contributions to the unlawful source or disgorge an amount equal to the contribution to the United States Treasury.<sup>2</sup>

<sup>1</sup> The Office of General Counsel has forwarded these checks to the United States Treasury pursuant to established procedures.

<sup>2</sup> As part of the Department of Justice's ("DOJ") Campaign Finance Task Force investigation into alleged violations of the Federal Election Campaign Act of 1971, as amended ("the FECA"), Simon C. Fireman and Aqua-Leisure Industries, Inc. ("Aqua-Leisure") pled guilty to criminal charges involving \$69,000 in contributions that they made to the Dole Committee and the Dole GELAC. Pursuant to their guilty pleas, Mr. Fireman and Aqua-Leisure paid \$1,000,000 and \$5,000,000 in fines, respectively. Pursuant to AO 1996-5, the Dole Committee disgorged the contributions it had received that were associated with these guilty pleas by sending a \$43,000 check made payable to the United States Treasury to the Commission; the Dole GELAC also disgorged the contributions that it had received that were associated with these guilty pleas by sending a \$26,000 check made payable to the United States Treasury to the Commission. See Letter to Colleen Sealander from the Dole Committee dated July 31, 1996. These checks, totaling \$69,000, were then forwarded to the United States Treasury. Following this disgorgement, Mr. Fireman and Aqua Leisure attempted to obtain the disgorgement monies from the Commission. When this attempt failed, they filed a claim pursuant to 28 U.S.C. § 1491 ("the Tucker Act") against the United States in the Court of Federal Claims. The Commission was not named as a defendant in this litigation and DOJ represented the United States. The parties have signed a settlement agreement and the United States Court of

In denying, in part, a motion to dismiss filed by DOJ, the *Fireman* court concluded that it had subject matter jurisdiction and that a Tucker Act claim was adequately alleged on the issue of "illegal exaction." *Fireman v. United States*, 44 Fed. Cl. 528, 533-538 (1999). The court stated that the allegations in the complaint indicated that donors had a right to be repaid any money that they illegally donated to a campaign under AO 1989-5 and that this right was absolute per 11 C.F.R. § 103.3(b)(2). *Id.* Finally, the court suggested that AO 1996-5 was a new interpretation of the law that took away "the absolute quality of the donors' rights for repayment if their contribution is rejected."<sup>3</sup> *Id.* (emphasis in original).

In light of *Fireman*, the Office of General Counsel believes that it is appropriate at this time to return the \$25,000 disgorgement payment to the Committee so that it can refund the contributions to their actual donors.<sup>4</sup> See AO 1989-5 (refunds of previously accepted unlawful contributions may only be made to the source of the unlawful contributions). Such action should avert any potential legal problems that could arise if Future Tech files a *Fireman*-type action.<sup>5</sup> Moreover, returning the money to the Committee and recommending that the Committee make refunds to the contributors is consistent with the Commission's decision to initiate a regulation project codifying the disgorgement option for illegal contributions as provided in AO 1996-5.

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Federal Claims dismissed the lawsuit on November 1, 1999. The settlement agreement states that the United States will pay \$69,000 to Mr. Fireman and Aqua-Leisure "in full and final settlement of all claims asserted in this action," that payment will "fully discharge the United States of all claims and demands made in connection with the subject of this action," and that the claim will be dismissed with prejudice.

<sup>3</sup> The *Fireman* court stated that under the new interpretation of 11 C.F.R. § 103.3(b)(2) set forth at AO 1996-5, the

FEC empowered the campaign to select an entity other than the donors, namely the United States Treasury, to receive the disgorged funds. The donors' guaranteed interest in the return of the money has been eliminated. The donors may not want their disgorged campaign contributions to be sent to the United States Treasury, but the donors have no control over whether the money is given to the Treasury or them. The compulsion is over the Plaintiffs' right (or lack thereof) to control where the money winds up after disgorgement.

*Fireman v. United States*, 44 Fed. Cl. 528, 533-538 (1999).

<sup>4</sup> Based on the information obtained in connection with the Juan Ortiz and Future Tech plea agreements, the actual donor for 23 of 25 contributions was Future Tech. See Notice of Repayment Determination and Disgorgement Determination for President William J. Clinton and Clinton/Gore '96 Primary Committee, Inc. at pp. 5-6. Based on the information included with Mr. Ortiz's plea agreement, Mr. Ortiz admitted making a \$1,000 contribution to the Committee knowing that he was not the true source of the contribution; it is not specified whether Future Tech was the actual source of the funds which he was reimbursed. *Id.* at Attachment B, pp. 1 and 22 and Attachment C, p. 35. Mr. Jimenez also made a \$1,000 contribution to the Committee; it is unclear whether this contribution consisted of personal funds or Future Tech monies. *Id.* at Attachment D, p. 3. The Commission may take into consideration in an enforcement action whether the Committee has refunded the contributions to the actual donors.

<sup>5</sup> At this time, this Office has no indication that Future Tech, Mr. Ortiz or Mr. Jimenez intends to challenge the Committee's disgorgement payment.

Currently, the regulations do not allow for disgorgement of contributions when the contributor can be identified.<sup>6</sup>

Attached for Commission approval is a proposed letter informing the Committee of the disgorgement refund and the requirement that refunds need to be made to the actual donors of the contributions; the proposed letter also specifically states that the Commission has no obligation to defend the Committee against any *Fireman*-type action stemming from its previous disgorgement decision. Attachment 2.

### III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Return the \$25,000 disgorgement payment to the United States Treasury made by the Clinton/Gore '96 Primary Committee, Inc. to the Clinton/Gore '96 Primary Committee, Inc. with a recommendation that the funds be refunded to their actual donors; and
2. Approve the attached letter.

### Attachments

1. Letter from Lyn Utrecht to Kim Bright-Coleman, October 8, 1999
2. Proposed Letter to Lyn Utrecht from Kim Leslie Bright

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<sup>6</sup> The Office of General Counsel notes that *Fireman* does not affect the Commission's ability to recommend payments to the United States Treasury for projected amounts of apparent excessive or prohibited contributions based on generally accepted statistical sampling techniques. 11 C.F.R. § 9038.1(f). Disgorgement is appropriate in such circumstances since it has a regulatory basis and because contributors are not specifically identified. Likewise, *Fireman* does not affect the Commission's ability to recommend payments to the United States Treasury for stale-dated checks. 11 C.F.R. § 9038.6.

RYAN, PHILLIPS, UTRECHT & MACKINNON

ATTORNEYS AT LAW

\*NONLAWYER PARTNER

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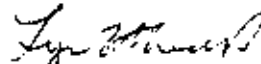
Kim Bright-Coleman  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Ms. Bright-Coleman:

Enclosed please find two checks payable to the United States Treasury pursuant to the Commission's notification letter dated August 10, 1999. The repayment check is in the amount of \$10,948.25 and the disgorgement check is in the amount of \$25,000. The Clinton/Gore '96 Primary Committee, Inc. ("the Committee") had placed these funds in escrow some time ago pending conclusion of the legal proceedings regarding these contributions.

While we are making the disgorgement payment to the Treasury pursuant to the Commission's direction, we are somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of the lawsuit that has been brought related to a Commission disgorgement order to another 1996 presidential campaign. We assume that the Commission would defend the Committee should any legal action be brought against the Committee to seek return of these funds to the contributor.

Sincerely,

  
Lyn Utrecht  
General Counsel  
Clinton/Gore '96

ATTACHMENT 1  
Page 1 of 2

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.

15466

CLINTON - GORE '96 PRIMARY  
COMMITTEE, INC.  
PO BOX 10983  
WASHINGTON D.C. 20036-0983

NATIONSBANK, N.A.  
WASHINGTON, D.C.  
15-120-540

15466

Security features included. Details on back.

PAY  
TO THE  
ORDER  
OF

DATE AMOUNT

TWO SIGNATURES REQUIRED IF OVER \$2000.00

*William S. Young*  
*James S. Adams*

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.

15465

CLINTON - GORE '96 PRIMARY  
COMMITTEE, INC.

PO BOX 18993  
WASHINGTON D.C. 20036-8893

NATIONSBANK, N.A.  
WASHINGTON, D.C.  
15-120-340

15465

PAY  
TO THE  
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OF

DATE

AMOUNT

TWO SIGNATURES REQUIRED IF OVER \$2000.00

*[Handwritten Signature]*  
*[Handwritten Signature]*

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Security Features Included. Details on back.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Lyn Utrecht  
Phillips, Utrecht & MacKinnon  
1133 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

Re: Clinton/Gore '96 Primary Committee, Inc.  
Disgorgement Payment (LRA #529)

Dear Ms. Utrecht:

On July 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must disgorge \$25,000 to the United States Treasury for contributions that were identified as being part of a corporate contribution scheme involving Future Tech International ("Future Tech") and its corporate officers.

By letter dated October 8, 1999, the Committee sent the Office of General Counsel a \$25,000 check made payable to the United States Treasury. In addition to enclosing the disgorgement payment, the letter indicated that the Committee is "somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of a lawsuit that has been related to a Commission disgorgement order to another 1996 presidential campaign." Although the letter does not identify the lawsuit, it appears that it is referring to *Fireman v. United States*, 44 Fed. Cl. 528 (1999), a United States Court of Federal Claims decision which granted, in part, and denied, in part, a motion to dismiss that was filed by the Department of Justice ("DOJ"). On November 1, 1999, the United States Court of Federal Claims dismissed the lawsuit.

On February 1, 2000, the Commission determined to return the \$25,000 disgorgement payment to the Committee. The Commission recommends that the Committee refund these contributions to their actual donors.<sup>1</sup> Please note that the Commission has no obligation to

<sup>1</sup> Based on the information obtained in connection with the Juan Ortiz and Future Tech plea agreements, the actual donor for 23 of 25 contributions was Future Tech. See Notice of Repayment Determination and Disgorgement Determination for President William J. Clinton and Clinton/Gore '96 Primary Committee, Inc. at pp. 5-6. Based on the information included with Mr. Ortiz's plea agreement, Mr. Ortiz admitted making a \$1,000 contribution to the Committee knowing that he was not the true source of the contribution; it is not specified whether Future Tech was the actual source of the funds which he was reimbursed. *Id.* at Attachment B, pp. 1 and 22 and

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defend the Committee against any *Fireman*-type action stemming from its previous disgorgement decision.

The Office of General Counsel is currently processing the necessary paperwork to obtain the \$25,000 in previously disgorged monies from the United States Treasury. This Office will forward the check that we receive from the United States Treasury to the Committee upon its arrival.

If you have any questions about this matter, please contact Andre G. Pineda, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Kim Leslie Bright  
Associate General Counsel

