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Rep. Earl Hilliard

Hilliard campaign boosted his business Hilliard's disclosures incomplete

By Jock Friedly

Since 1992, Rep. Earl Hilliard (D-Ala.) has made well over \$100,000 in payments from his campaign to businesses and charities he controls, in a manner that raises questions about whether the congressman has complied with federal election laws, an investigation by The Hill has found.

First in a two-part series.

The payments to his companies included thousands of dollars in advertising on a radio station that Federal Communications Commission filings indicate was not broadcasting and insurance premiums to a company that state auditors said sold only burial policies.

Although campaigns may employ candidate-owned companies by paying market rates for goods and services, the nature of these payments suggests the campaign may have converted donations for "personal use" or payments for non-campaign purposes, which violates the Federal Election Campaign Act and implementing regulations.

Public records and interviews regarding Hilliard's ever-changing web of companies reveal other

questionable practices by the Birmingham lawmaker, including the following:

- Hilliard has repeatedly failed to make disclosures about his many business interests that are required under the Ethics in Government Act;

- Hilliard's campaign made more than \$30,000 in interest-free loans to family members and organizations they control, at least in small part helping to finance the purchase of a building from a for-profit company of Hilliard's at an inflated price;

- Hilliard blurred legal lines between his congressional office, his private business enterprises

Rep. Hilliard ran campaign activity and private business dealings out of his federal office.

and his campaign headquarters, including the apparent use of campaign funds to subsidize his business operations and the apparent use of official office space to run his campaign;

- His first congressional campaign in 1992 ran a negative cash balance of thousands of dollars for

months, a paradox suggesting to Federal Election Commission (FEC) officials that the campaign may have received money from an undisclosed source.

Hilliard's election to Congress in 1992 was historic. Running in a newly configured district regarded as one of the poorest in America, he became the first black representative from Alabama since Reconstruction. Since then, he has aggressively fought for projects and grant money that could bring jobs to help his mostly African-American constituency.

The suspect practices involve his campaign and his modest business empire, which consists mostly of a constantly changing list of small firms falling under a tightly controlled holding company named Hilliards & Co.

- It's really confusing because it's a shell game," commented Jack Williams, the tax collector for Jefferson County who has criticized the repeated failure of Hilliard's businesses to pay taxes. At one time, federal tax liens against property owned by Hilliard companies exceeded \$145,000, according to the Associated Press.

The extent of Hilliard's interest

in the holding company and its subsidiaries, many of which include the name "American Trust," is difficult to determine from his financial disclosures. His forms covering the 1993 and 1994 years list no corporate assets, transactions, outside income or directorships of any private company.

These sworn declarations contrast with a report by Alabama insurance regulators in 1995 that stated that the lawmaker owned a controlling interest in the holding company at least in 1994.

The declarations also contrast with a Dec. 15, 1994, letter filed with the Federal Communications Commission (FCC) by his nephew, state Rep. John Hilliard (D), who runs the day-to-day operations of Hilliards & Co. An attachment to the letter depicts the congressman as the president and "ultimately controlling person" of Hilliards & Co. with a 90 percent personal stake and a 73 percent interest attributable to himself, his wife and his two children. The same distribution of shares appears in an ownership report that Earl Hilliard filed with the FCC in 1986.

Not until his disclosure for 1995, filed in

the spring of 1996, did Hilliard finally acknowledge a stake in Hilliards & Co. worth more than \$100,000. He also said he was director, not president, of the holding company and three subsidiaries. On the disclosure form he failed to mention any shares held by his wife, Mary, even though disclosure of a spouse's interests is required by the Ethics in Government Act. The next year, he again did not list a financial stake in, or a liability from, Hilliards & Co. or any of its subsidiaries.

In addition, on none of his disclosure forms has he listed any interest in the Birmingham Greater Golf Association. This association was hired by the city in 1987 to run the Highland golf course. According to William Pate, an assistant city attorney for Birmingham, as well as Gusti Yearout, who serves as attorney for the ownership group, Hilliard has a major personal stake in the association, along with five other investors.

To the community, the association was a failure. The golf course now lies unused, its greens turned brown and its vegetation unmanageable. The congressman joined his co-investors a few weeks ago in filing a law-

Legal questions raised

by office-sharing

Hilliard paid own burial

insurance company

suit claiming that the city caused the failure of the course by placing restrictions on how much the company could charge golfers.

But city officials are now planning to seek legal recourse from Hilliard and his colleagues for allegedly defaulting on a \$300,000 loan from the city. "We are going to countersue [for] the \$279,000 that we believe they owe," Pate said in an interview two weeks ago.

The possibility of a public court fight led Hilliard to recently phone the city to offer money if it would drop its claim against him. "He offered to pay one-sixth of the debt if we released him on that," Pate said, noting that the city has no plans to release him.

Many of the legal questions raised by The Hill investigation revolve around Hilliard's campaign.

Hilliard swept to victory in 1992 in his heavily Democratic district after a bruising primary that resulted in a run-off. In that election year, and the ones that followed, he appears to have made little distinction between his companies and his campaign.

From 1992 to 1996, the campaign headquarters was located on Third Avenue in Birmingham in a two-story brick and stone

office building, owned by a company controlled by Hilliard. The same space also housed several of his businesses.

The campaign and these businesses even shared the same phone and fax numbers, as well as the same post office box — all paid for by the campaign, according to the cam-

campaign's FEC filings. When the campaign sent out faxes, Hilliard's American Trust company name usually appeared on top.

Experts say the office-sharing arrangement raises legal questions under federal tax law.

"That would be a very serious concern," said Jack Reilly, an official with the tax-exempt organizations division of the Internal Revenue Service. "It's saying the political organization doesn't exist" because the campaign ceases to be a legally separate identity from the company.

The office-sharing also presents problems under the election law.

Campaign laws prohibiting conversion of campaign funds for "personal use" — defined by law as the campaign paying costs that would exist "irrespective of the candidate's campaign or duties as a federal officeholder" — may also have been violated by the sharing of resources. "Personal use" is anything that personally benefits the candidate," said former FEC Commissioner Trevor Potter, a leading election law expert now in private law practice. Personal use, he said, would include excessive payments to corporations controlled by the candidate.

To avoid trouble, Potter said, a "paper trail" would be needed to show why rent and other costs were set at the level they were. "You'd simply have to be able to show you had some good-faith measurement," he said.

Conversely, noted attorney Jan Baran, a Republican specializing in election law, the campaign also would need to properly

reimburse the corporation for funds or in-kind resources spent on campaign purposes. "That gets into whether corporate resources were being used improperly to finance a congressional campaign," he said. "He's got to be careful at both ends."

Hilliard's practices raise questions of compliance with both these prohibitions.

On the one hand, records filed by the Hilliard for Congress committee indicate the campaign never reimbursed the companies for the use of desks, phones, the fax machine and other accoutrements that were already located in the facility that became the campaign headquarters.

On the other hand, according to the election filings, his campaign paid more than \$8,200 in utility bills for the building directly to the utility companies, even though it was not the sole occupant. No utility reimbursements to the campaign were provided by the other tenants, which were all Hilliard's private businesses. Real estate agents in Birmingham say the arrangement was extraordinary because tenants normally are responsible for utilities only when they occupy the entire building.

At the end of 1994, the campaign's utility payments stopped for a reason that is not clear.

The campaign picked up other miscellaneous costs of the building, such as \$702.04 to fix the air conditioning unit, even though no record exists that such a unit was purchased by the campaign. In the next election cycle, the campaign paid to repair bad plumbing and a broken water heater. The campaign also bought a plane ticket for Hilliard to attend a confer-

ence of the Minority Radio Association, which may have been related to his ownership of an AM radio station. The association could not be located for comment.

The campaign appears to have subsidized Hilliard's company operations in other ways as well. Direct payments to companies and charities under the control of the congressman's family or listing their address at his post office box totaled \$102,000. Another \$63,000 went to pay Hilliard's relatives in salaries and consultant fees. Tens of thousands more, sometimes paid in sums that rounded to the nearest \$100, went to Hilliard family members to defray expenses. An additional \$30,000 was given to family members or charities they controlled in interest-free loans.

In 1992, the campaign began to pay rent

to whichever Hilliard company or charity held title to the Third Avenue building at that particular time. Rent payments grew from \$600 a month in 1992 to \$1,000 to \$1,500 and finally, in 1996, to \$2,000, with no reduction made during non-election years. The more than tripling in rent came despite the fact that Hilliard's only seriously contested campaign came in the 1992 primary, and according to the campaign's FEC filings, the number of salaried campaign employees had dropped to zero in the second half of 1996.

How much office space the campaign occupied is unclear. Candidates are not required to disclose such figures. Alabama insurance examiner Greg Taylor spent weeks in the building auditing the books at a time when records show the campaign was paying rent. But Taylor was not aware that the office building — much of it empty — also served as a campaign office. "To my knowledge it was just the insurance company," he said.

Hilliard's insurance company, American Trust Life, itself received unusual \$181 payments from the campaign. Despite its name, its sole business, according to a 1995 state examiner's report written by Taylor, was burial insurance. Clients, mostly poor Birmingham residents, typically paid pennies a day for policies that returned anywhere from \$500 to \$2,500 to cover their funeral costs.

It is not clear from campaign disclosures who or what the insurance policy covered. The monthly premium did not change regardless of how many employees the campaign had. "One hundred eighty one dollars would have been high for what [American Trust's] premiums were," Taylor said.

Like several of his previous business ventures, Hilliard's insurance company was a flop. Finding that the company had overstated its provable assets by a factor of 30, the state finally seized the troubled life insurance business in August 1996. The state continued to operate the company, collecting the monthly bills and paying claims.

The campaign did not continue its \$181 monthly policy after Hilliard began to lose control of American Trust Life. Campaign records indicate that its last premium pay-

ment occurred in April 1996, the month that the state made the first step in taking over. The company is now being liquidated, and the policies transferred to other providers.

In at least some instances, the timing of campaign payments suggests that the payments were intended to help the businesses. In October 1994, for example, with the campaign nearly broke, the campaign prepaid \$4,500 in rent. One year, it also prepaid its insurance premiums.

Another questionable campaign expenditure is the \$1,500-a-month retainer paid beginning this year to the American Trust Advertising Agency. The address listed is the same as the studio for WIQR, a Montgomery radio station Hilliard owns.

The payments have occurred even though it was a non-election year, the audience of the station was limited, the listener area contains relatively few congressional district residents, and no other radio stations received money during that period.

Other radio advertising by the campaign also raises questions. In April and May of 1996, with Hilliard facing no primary opponent, the campaign paid \$4,800 to a Hilliard firm for what it described as "radio airtime advertisement" on WIQR. At that time, however, the radio station was off the air, according to a former employee and a June 1996 FCC filing on the station's behalf. WIQR did not receive approval from the FCC to return to the air until December 1996.

Some of Hilliard's businesses were intertwined with charities, which shared the

same post office box as the campaign and were founded by family members.

According to state auditors, payments flowed back and forth between American Trust Life and the African American Institute. And in 1993, the African American Institute paid a Hilliard company \$385,000 for a Third Avenue property housing Hilliard's campaign and companies. Two years later, the institute sold the building to American Trust Life for \$1 "and other goods and valuable consideration."

Rent that the campaign paid on the property jumped from \$1,000 to \$1,500 immediately after the charity's original purchase of the property — at more than twice what the county lists as its present market value of \$185,000. The campaign also donated \$800 to the institute that year and gave it a \$350 interest-free loan. According to a 1995 article in the Birmingham Post-Herald, most of the charity's income went to pay mortgage debt.

The campaign made other interest-free loans totaling more than \$80,000. Of that sum, \$13,000 went to Rita Hilliard Hall, the congressman's niece who is the campaign's treasurer and his business's office manager, and \$11,300 went to the reelection campaign of his nephew, state Rep. Hilliard. Another \$5,750 went to a family-controlled charity called the Alabama Film and Entertainment Council.

Thus far, the FEC's only official action against the campaign was a \$5,500 fine for late filing of forms. The agency also raised

questions about the campaign's 1992 assertions regarding how much cash it had on hand.

In that year, the Hilliard for Congress campaign registered minus-\$8,705 cash on hand on June 30, 1992, minus-\$4,379 by the end of September, and minus-\$7,537 two weeks later. The first of the filings caught the notice of an FEC analyst, who wrote that "this suggests that you have overdrawn your account, made a mathematical error, or incurred a debt" and that, "if the negative ending cash balance is a result of an overdraft, it may constitute a prohibited bank contribution."

The campaign responded that this was an accounting anomaly caused by "checks that were written but, (sic) have not cleared the bank."

The FEC accepted this explanation. Yet, according to an analysis by The Hill based on campaign filings, Hilliard ran a negative cash balance for months at a stretch that year.

"At best, it shows that they were living hand-to-mouth and that they were constantly anticipating donations to cover checks they had written over a protracted period of time," said Baran, the election law expert. "The worst can only be speculated as to whether it is possible to juggle a campaign check book so finely over so long a period of time."

Laura Dunphy and Sandra Basu provided research assistance for this story.

Next week: Whether tax dollars helped support Rep. Hilliard's sibling business



FILE PHOTO/THE HILL

Rep. Earl Hilliard (D-Ala.)

Ownership in Hilliards & Co. as of December 1994:

NAME	RELATIONSHIP	PERCENT
Rep. Earl F. Hilliard		30.48%
Mary F. Hilliard	wife of Earl	14.47%
Iola Hilliard	mother of Earl	.95%
Alesia L. Hilliard	daughter of Earl and Mary	13.52%
Earl F. Hilliard Jr.	son of Earl and Mary	13.52%
Randall M. Hilliard	nephew of Earl	13.52%
Frederick E. M. Hilliard	nephew of Earl	13.52%