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ONE HUNDRED SIXTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Washington, DC 20515-6328

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SUITE 212-2, THE CAPITOL  
2021 225-7100

August 10, 1999

### **BY HAND-DELIVERY**

The Honorable Earl F. Hilliard  
U.S. House of Representatives  
1314 Longworth House Office Building  
Washington, D.C. 20515

Dear Colleague:

We appreciate your effort to resolve the matters pending before the Committee through the written proposal offered on your behalf by your attorney, Ralph Lotkin, during his meeting with Committee counsel on July 30, 1999. We have carefully reviewed that proposal and we have discussed with Committee counsel other information provided by your attorney during that meeting. We have determined that we must reject the proposal. We simply do not have a sufficient factual basis to resolve the pending issues.

In this letter we discuss the areas about which we have continuing concerns. In doing so, of course, we also ask you for explanations and information addressing these concerns. We wish to emphasize that direct, detailed, specific, and, where possible, verifiable responses by you to our concerns and questions will assist us greatly in reaching appropriate and fair resolutions in this matter. As it has been when we have addressed earlier requests for information to you in this matter, it is our hope that you will provide such responses. It is in this spirit that we write to you.

### **Financial Disclosure**

As you know, the Committee has an obligation to oversee and enforce financial disclosure requirements; this obligation is a fundamental aspect of our jurisdiction. Therefore, we would find it extremely useful, for the purpose of resolving our concerns in this area, to hear from you why -- as you stated in your May 1998 amendment to your Financial Disclosure Statements for the years 1992 through 1997 -- it is your understanding that you were not required under the Ethics in Government Act to report Hilliards & Company, Inc., as an asset on your Financial Disclosure Statement for those years. At the meeting with Committee counsel on July 30, 1999, Mr. Lotkin provided a letter dated April 9, 1998, from James Wright, a bookkeeper, stating that Mr. Wright "has been responsible for preparing corporate financial records for Hilliards & Company, Inc."

EXHIBIT

and that "for the calendar years 1992 through 1997 inclusive, Hilliards & Company had a negative book value which was also reflected in forms filed with the Internal Revenue Service." If accurate, please personally confirm that Hilliards & Company had a negative book value for the years 1992 through 1997. Any further documentation or records that you can provide relating to this issue would greatly facilitate our ability to resolve our concerns.<sup>1</sup>

Our questions to you are similar regarding why you believe your interest in the "Greater Birmingham Golf Association, Inc." was not reportable on your Financial Disclosure Statements for the years 1992 through 1997. While we appreciate the offer to us, through Mr. Lotkin, of two K-1 tax schedules in connection with this issue, it is not clear on their face that those documents relate to the Greater Birmingham Golf Association (the schedules specifically refer to "Birmingham Recreation, Inc."); further, those documents appear to concern only your income from your interest in the entity and do not appear to concern the value of the underlying holding. Therefore, again if accurate, please personally confirm that Greater Birmingham Golf Association had a negative book value for the years 1992 through 1997. Any documentation or records that you can provide relating to this issue would be very valuable to us in our efforts to resolve our questions about this issue.

#### Campaign Expenditures for Rent and Utility Services

Broadly speaking, the explanations and information we ask you to provide to us in this area relate to our attempt to resolve questions as to whether or not, through the payment of rents by your campaign in Birmingham, campaign funds may have been converted to personal use in excess of reimbursement for legitimate and verifiable campaign expenses. In order to address these questions, we simply must have a sufficient basis to reach conclusions about whether or not the rates for rents paid by your campaign for the Third Avenue North location in Birmingham -- both to American Trust Insurance Company and to the African American Institute -- were based on fair market value. One category of information which we believe to be essential to us in reaching any determination as to fair market value is information as to the square footage of space occupied by your campaign over the period in question, that is, from roughly May 1992 to December 1997. Therefore, please tell us what the square footage was for your campaign office over this period; if the square footage changed, please tell us when, how and why; also, please identify the specific location(s) for your campaign office in Birmingham over this period.

Particularly in light of the Committee's letter advisory opinion to you of June 1993 -- in which the Committee advised you that you could continue to house your campaign in Birmingham with the building owned by American Trust Insurance

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<sup>1</sup> In determining what kind of documentation and records the Committee would find useful with respect to this and the other areas of concern discussed in this letter, please consult the Committee's May 12, 1999, letter to you.

Company provided that the company charged rent to the campaign based on fair market value -- we would appreciate your explaining to us what efforts, if any, were undertaken by you, or people working on your behalf, to assure that fair market value was paid, as well as to document that fair market value was paid or required to be paid. With regard to these issues, as well as with regard to the questions above relating more specifically to locations and square footages occupied by your campaign office in Birmingham, verifiable documents and records would be of great assistance to us in resolving our concerns; therefore, we ask you to provide to us any documents or records that may be relevant to these matters. To the extent that relevant documents or records do not exist (and we are aware of your attorney's representations as to the state of recordkeeping relating to these issues), please personally so inform us and please explain the state of documentation in this matter. Having said this, however, we also note that, even if full documentation does not exist on these issues, memories certainly do exist; therefore, we ask you to provide us the name, address and telephone number, if possible, of anyone who may have personal knowledge relevant to the questions set forth above regarding expenditures by your campaign for rent.

Lastly, in the July 30 meeting with Committee counsel, your attorney represented that each of the business entities that occupied the Birmingham building housing your campaign paid for its own utilities. So that we may resolve this issue, please confirm for us, in your own words and if accurate, that your campaign paid only for its own utilities in the building in question and that each of the other entities in the building paid for its own utilities.

#### **Purchase and Sale of Building Housing the Campaign in Birmingham**

In our view, receiving sufficient assurances as to the bona fides of the transactions between American Trust Life Insurance Co. and the African American Institute for the building at Third Avenue North in Birmingham is directly connected to the concerns expressed above regarding expenditures for rent by your campaign. Therefore, we ask you to shed as much light on these transactions as you can. We would find answers to the following kinds of questions especially helpful in our attempt to understand these events: on what basis was the 1993 sales price of \$385,000 arrived at; what were the balances of the two mortgages assumed by the African American Institute in the 1993 transaction; given the terms of its purchase of the building in 1993, why did the African American Institute sell the building back to American Trust Life in 1995 for \$1 (in addition to discharging itself of certain mortgage liability owed by you)? What we seek from you -- and what we would find to be of the greatest weight in this area -- is as full, candid, and specific an explanation as possible of these transactions and the circumstances surrounding them. As with the other areas covered in this letter, any and all documentation you can provide relating to these transactions would be of great help to us. If documents or records do not exist, please inform us and explain, if you can. We would also appreciate your identifying for us (by name, address and telephone number)

any person -- including the relevant persons at the African American Institute -- who was involved in, or had firsthand knowledge of, either of the two transactions at issue.

#### Possible Receipt of Free Occupancy by the Campaign

As detailed in our May 12, 1999, letter to you, it appears that there were periods between 1992 and 1998 when your campaign did not pay rent for its occupancy of office space in Birmingham. At the meeting between Mr. Lotkin and Committee counsel on July 30, 1999, he acknowledged that there were periods when your campaign occupied space in Birmingham but did not pay rent contemporaneously with that occupancy. Mr. Lotkin offered that the campaign later made payments satisfying all of its rent obligations; he said he was unaware, however, of any documentation of those payments.

As you are no doubt aware, if your campaign received free occupancy of office space, questions arise as to whether such free occupancy constituted an in-kind contribution to the campaign. Mr. Lotkin's proffer of information notwithstanding, we do not have sufficient factual representations from you to answer or resolve these questions. Therefore, we ask you to tell us whether there occasions or periods when the campaign in Birmingham did not pay rent when such rent was due or when it was obligated to make such payments. In your response to us regarding this issue, please be guided by the following questions: When were the occasions or periods of non-payment of rent, if any? What were the amounts involved? Why was the rent not paid, or not paid in a timely fashion? Who at the campaign was responsible for making the rental payments at the relevant times; who at American Trust Life was responsible for collecting rents? If, as your attorney has stated, your campaign eventually made payments satisfying its rent obligations, please tell us as much as you can about the facts and circumstances surrounding such payments. Does any documentation exist relating to such payments? If so, we would find it valuable for you to provide it to us.

#### Campaign Loans

As we noted in previous correspondence, FEC filings by your campaign indicate that your campaign made loans to your niece Rita Hall and to Jacqueline Smith and Elvira Willoughby. Our previous understanding as to the specific amounts and terms of these loans is set forth in our letter to you of May 12, 1999. Based on this understanding, we had concerns that these loans may have constituted expenditures of funds from your campaign account not attributable to bona campaign or political purposes.

In the July 30 meeting with Committee counsel, Mr. Lotkin advised, among other relevant matters, that you had personal knowledge of the loans to the three people mentioned above; that none of the loans was memorialized in writing; and that the purpose of each loan was to help the recipient "resolve personal financial problems." The written proffer tendered by Mr. Lotkin sets forth other representations regarding these loans. At the meeting, Mr. Lotkin also commented that he was unaware of any

documentation for loan repayments reported to the FEC, although he commented that such repayments were, in fact, made. Significantly, Mr. Lotkin acknowledged that these loans were not attributable to bona fide campaign or political purposes.

We consider the representations made by Mr. Lotkin regarding these loans as evidence of a commitment to candor by you on this issue. We appreciate that greatly. In furtherance of that apparent commitment, we ask you to explain to us, in your own words, the facts and circumstances surrounding these loans. In setting forth your explanation, it would be helpful if you specifically informed us of such matters as the purpose of each loan and your knowledge of each of the loans at the time each loan was made. To the extent you have any knowledge, please also state how each loan recipient used the loan proceeds. Here, as with regard to the other issues discussed in this letter, documentation would be very helpful to our purposes and we would appreciate its production by you. Therefore, please provide any documentation available regarding these loans, including documentation as to any repayments of the loans. If no such documentation exists (or was never created), please explain this to us as fully as you can.

Not only as the Chairman and Ranking Member of this Committee, but also as your colleagues, we recognize that there has been a long exchange between you and the Committee on the matters discussed in this letter. The Committee began and continued its correspondence with you on these matters because they raise concerns which we take seriously, and which we believe need to be addressed. We know that you take these concerns seriously as well. But, as we began this letter by noting, the explanations and information that you and your attorney have so far offered on the matters still at issue simply do not provide us with a sufficient factual basis for arriving at any conclusions as to these matters. That is why we wish to emphasize to you that, from the Committee's perspective, there can be no substitute for specific, direct, and, whenever possible, documented responses to the questions and concerns put forth here. We believe that it is possible that sufficient, specific, direct, and, where possible, verifiable responses could answer and allay some, most or all of these questions and concerns. We truly hope to receive such responses from you.

So that we may give your responses the full consideration they deserve, we ask that you submit your responses to the matters set forth in this letter to the Committee in writing by no later than September 7, 1999. We also ask that you have your attorney review your responses before they are submitted to the Committee, and that you personally sign your responses. If your responses to this letter do not provide a sufficient factual basis to resolve the matters discussed above, we intend to present those matters to the full Committee at its first meeting in September 1999.

The Hon. Earl F. Hilliard  
August 10, 1999  
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Thank you for your cooperation in this matter. If you have any questions regarding this letter, please call Chief Counsel Robert L. Walker or Counsel David H. Laufman at (202) 225-7103.

Sincerely,

*Lamar Smith*

Lamar Smith  
Chairman

*Howard L. Berman*

Howard L. Berman  
Ranking Minority Member

cc: Ralph Lotkin, Esq.