FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 6, 2009

MEMORANDUM

To: Judith Ingram
Press Officer

From: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Subject: Public Issuance of the Audit Report on Kuhl for Congress

Attached please find a copy of the audit report on Kuhl for Congress, which was approved by the Commission on June 24, 2009.

All parties involved have received informational copies of the report 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
ITD Web

Report of the Audit Division on Kuhl for Congress

May 16, 2003 - December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.[1] The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Kuhl for Congress is the principal campaign committee for John "Randy" Kuhl, Jr., Republican candidate for the U.S. House of Representatives from the state of New York, 29th Congressional District and is headquartered in Bath, New York. For more information, see the Campaign Organization chart, p. 2.

Financial Activity (p. 2)

- **Receipts**
  - Contributions from Individuals — $ 493,974
  - Contributions from Other Political Committees — 524,663
  - Candidate Loan — 8,000
  - In-Kind Contributions — 22,974
  - **Total Receipts — $ 1,049,611**
- **Disbursements**
  - Operating Expenditures — $ 978,533
  - Candidate Loan Repayment — 8,000
  - In-Kind Contributions — 22,974
  - **Total Disbursements — $ 1,009,507**

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Apparent Prohibited In-Kind Contributions (Finding 2)

[1] 2 U.S.C. §438(b).

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Part I
Background

Authority for Audit
This report is based on an audit of Kuhl for Congress (KFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must 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. 2 U.S.C. §438(b).

Scope of Audit
This audit examined:
1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Part II
Overview of Campaign

Campaign Organization

Important Dates	Kuhl for Congress
• Date of Registration	July 2, 2003
• Audit Coverage	May 16, 2003 – December 31, 2004
Headquarters	Bath, NY
Bank Information	
• Bank Depositories	One
• Bank Accounts	Three Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Michael A. Avella
• Treasurer During Period Covered by Audit	Michael A. Avella
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity
(Audited Amounts)

Cash on hand @ May 16, 2003	**$ -0-**
o Contributions from Individuals	$ 493,974
o Contributions from Other Political Committees	524,663
o Candidate Loan	8,000
o In-kind Contributions	22,974
Total Receipts	**$ 1,049,611**
o Operating Expenditures	$ 978,533
o Candidate Loan	8,000
o In-kind Contributions	22,974
Total Disbursements	**$ 1,009,507**
Cash on hand @ December 31, 2004	**$40,104**

Part III
Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of KFC's reported figures to its bank records revealed that receipts were understated by $14,416 in 2003 and by $36,267 in 2004. Disbursements were understated by $16,323 in 2003 and $55,838 in 2004. The ending cash on hand balances were overstated by $1,907 in 2003 and $18,809 in 2004. Material portions of these differences were due to the unreported apparent prohibited in-kind contributions which are the subject of Finding 2. The Audit staff recommended that KFC file amended reports to correct these discrepancies. In response, KFC filed amended reports which materially corrected the misstatements, except for the unreported prohibited in-kind contributions. Counsel for KFC objects to the Audit staff's conclusion that KFC accepted prohibited in-kind contributions. As discussed below, there were not sufficient votes to adopt the Audit staff's proposed allocation method regarding certain disbursements which underlie a portion of the apparent prohibited in-kind contributions. (For more detail, see p. 4)

Finding 2. Receipt of Apparent Prohibited In-Kind Contributions

Based on the documentation provided, the Audit staff found that KFC did not allocate disbursements made by Friends for Kuhl (the candidate's non-federal campaign committee; *hereinafter* the "State Committee") that may have benefited KFC. The Audit staff determined that the total share of such disbursements that KFC should have paid was $118,056, thus resulting in KFC's receipt of apparent prohibited in-kind contributions in that amount from the State Committee. In the Interim Audit Report, the Audit staff recommended that KFC provide evidence that the disbursements were allocated according to the benefit reasonably expected to be derived by each campaign, or that the disbursements did not benefit the federal campaign, by submitting documentation and information about the actual usage and benefit derived by each campaign; or, provide evidence that the resulting in-kind contributions were not from a prohibited source. Absent the provision of such evidence, the Interim Audit Report recommended that KFC make a payment to the U.S. Treasury for the amount of the prohibited in-kind contributions, since the State Committee has terminated. Counsel for KFC objects to the Audit staff's conclusion that KFC accepted prohibited in-kind contributions. In the draft Final Audit Report, the Audit staff proposed that, in the absence of such documentation, the Commission apply an allocation method for certain disbursements based on the ratio of funds received by each committee, while allocating 100% of certain other disbursements to KFC based on the nature and timing of such disbursements. The Audit staff also allocated certain other payroll expenses based on KFC's allocation of payroll expenses in the middle of November, 2004. There were not sufficient votes to adopt these alternative allocation methods that the Audit staff proposed; however, the Commission did agree with the allocation of certain disbursements ($22,974; "Expenses Allocation Based on Documentation").
(For more detail, see p. 6)

Part IV
Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary
A comparison of KFC's reported figures to its bank records revealed that receipts were understated by $14,416 in 2003 and by $36,267 in 2004. Disbursements were understated by $16,323 in 2003 and $55,838 in 2004. The ending cash on hand balances were overstated by $1,907 in 2003 and $18,809 in 2004. Material portions of these differences were due to the unreported apparent prohibited in-kind contributions which are the subject of Finding 2. The Audit staff recommended that KFC file amended reports to correct these discrepancies. In response, KFC filed amended reports which materially corrected the misstatements, except for the unreported prohibited in-kind contributions. Counsel for KFC objects to the Audit staff's conclusion that KFC accepted prohibited in-kind contributions. As discussed below, there were not sufficient votes to adopt the Audit staff's proposed allocation method regarding certain disbursements which underlie a portion of the apparent prohibited in-kind contributions.

Legal Standard
Contents of Reports. Each report must disclose:
- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis
The Audit staff reconciled KFC's reported activity to bank records for calendar years 2003 and 2004. The following charts outline the discrepancies for each year. Succeeding paragraphs address the reasons for the misstatements.

2003 Activity			
	Reported	**Bank Records**	**Discrepancy**
Beginning Cash Balance @ May 16, 2003	$ -0-	$ -0-	$ -0-
Receipts	$ 47,962	$ 62,378	$ 14,416 Understated
Disbursements	$ 8,750	$ 25,073	$ 16,323 Understated
Ending Cash Balance @ December 31, 2003	$ 39,212	$ 37,305	$ 1,907 Overstated

The net understatement of receipts was the result of the following:

• Contribution not reported	$ 2,000
• Contribution over-reported	(900)
• Contribution not traced to bank activity	(500)
• Unreported apparent prohibited in-kind contributions from the State Committee, a non-federal campaign committee (See Finding 2)	14,016
• Unexplained difference	(200)
Net understatement	$14,416

The understatement of disbursements was the result of the following:

• Operating Disbursements not reported	$ 2,207
• Contribution Refund not reported	100
• Unreported apparent prohibited in-kind contributions	14,016
Understatement	$16,323

As a result of the misstatements above, the ending cash balance was overstated by $1,907.

2004 Activity			
	Reported	**Bank Records**	**Discrepancy**
Beginning Cash Balance @ January 1, 2004	$ 39,212	$ 37,305	$ 1,907 Overstated
Receipts	$ 950,966	$ 987,233	$ 36,267 Understated
Disbursements	$ 928,596	$ 984,434	$ 55,838 Understated
Ending Cash Balance @ December 31, 2004	$ 58,913[2]	$ 40,104	$ 18,809 Overstated

The net understatement of receipts was the result of the following:

• Contributions from individuals not reported	$ 15,850
• Contributions from political committees not reported	16,000
• Unreported apparent prohibited in-kind contributions (See Finding 2)	8,958
• Other unreported in-kind contributions	1,001
• In-kind contributions reported twice	(3,964)
• Contributions from individuals reported twice	(2,600)
• Contributions over reported	(8,005)
• Contribution under reported	3,000
• Disbursement reported as a contribution	(462)
• Contributions reported as memo entries	700
• Unexplained difference	5,789
Net understatement	$36,267

[2] Ending cash-on-hand does not foot due to mathematical discrepancies.

The net understatement of disbursements was the result of the following:

• Payroll disbursements not reported	$ 14,609
• Operating disbursements not reported	46,911
• Unreported apparent prohibited in-kind contributions	8,958
• Other unreported in-kind contributions	1,001
• In-kind contributions reported twice	(3,964)
• Reported void and duplicate disbursements	(10,948)
• Disbursements over reported	(129)
• Unexplained difference	(600)
Net understatement	$55,838

The $18,809 overstatement of ending cash-on-hand was the net result of the misstatements described above, as well as the following: (1) a $1,169 understatement of beginning cash-on-hand for the July Quarterly report compared to the closing cash on the previous report; and, (2) a similar $1,500 understatement of beginning cash-on-hand for the Year-End report.

The Audit staff provided KFC representatives with a copy of the bank reconciliation and supporting schedules at the exit conference. In response to the exit conference, KFC stated it would amend all reports to correct the reporting discrepancies.

Interim Audit Report Recommendation and Committee Response
The Audit staff recommended that KFC amend its reports to correct the misstatements noted above. It was further recommended that the most recent report be amended to show the ending cash on hand balance with an explanation that it resulted from audit adjustments from a prior period. In response, KFC filed amended reports which materially corrected the misstatements, except for the unreported apparent prohibited in-kind contributions which are the subject of Finding 2. Counsel for KFC objects to the Audit staff's conclusion that KFC accepted prohibited in-kind contributions. As a result, the apparent prohibited in-kind contributions in the amounts of $14,016 and $8,958 for 2003 and 2004 respectively were not included in KFC's amended reports.

As discussed below, the Commission agrees with the Audit staff's allocation of certain disbursements, but there were not sufficient votes to adopt the alternative allocation methods that the Audit staff proposed which underlie a portion of the apparent prohibited in-kind contributions.

Finding 2. Receipt of Apparent Prohibited In-Kind Contributions

Summary
Based on the documentation provided, the Audit staff found that KFC did not allocate disbursements made by Friends for Kuhl (the candidate's non-federal campaign committee; *hereinafter* the "State Committee") that may have benefited KFC. The Audit staff determined that the total share of such disbursements that KFC should have paid was $118,056, thus resulting in KFC's receipt of apparent prohibited in-kind

contributions in that amount from the State Committee. In the Interim Audit Report, the Audit staff recommended that KFC provide evidence that the disbursements were allocated according to the benefit reasonably expected to be derived by each campaign, or that the disbursements did not benefit the federal campaign, by submitting documentation and information about the actual usage and benefit derived by each campaign; or, provide evidence that the resulting in-kind contributions were not from a prohibited source. Absent the provision of such evidence, the Interim Audit Report recommended that KFC make a payment to the U.S. Treasury for the amount of the prohibited in-kind contributions, since the State Committee has terminated. Counsel for KFC objects to the Audit staff's conclusion that KFC accepted prohibited in-kind contributions. In the draft Final Audit Report, the Audit staff proposed that, in the absence of such documentation, the Commission apply an allocation method for certain disbursements based on the ratio of funds received by each committee, while allocating 100% of certain other disbursements to KFC based on the nature and timing of such disbursements. The Audit staff also allocated certain other payroll expenses based on KFC's allocation of payroll expenses in the middle of November, 2004. There were not sufficient votes to adopt these alternative allocation methods that the Audit staff proposed; however, the Commission did agree with the allocation of certain disbursements ($22,974; "Expenses Allocation Based on Documentation").

Legal Standard

Contribution Defined. A gift, subscription, loan (except when made in accordance with 11 CFR §§100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. 11 CFR §100.52(a).

In-Kind Contribution. The term *anything of value* includes in-kind contributions. The provision of services at a charge less than the usual and normal charge results in an in-kind contribution. The usual and normal charge for a service is the commercially reasonable rate that one would expect to pay at the time the services were rendered. The value of such a contribution would be the difference between the usual and normal charge for the services and the amount the political committee was billed and paid. 11 CFR §100.52(d).

Allocation of expenses between candidates.

- If an individual is a candidate for a Federal office and a State office, he or she must designate separate principal campaign committees. The campaigns may share personnel and facilities, as long as expenditures are allocated between the campaigns, and the payment made from each campaign account reflects the allocation. 11 CFR §110.8(d) (1) and (3).
- Expenditures made on behalf of more than one clearly identified Federal and non-Federal candidate shall be attributed to each candidate according to the benefit reasonably expected to be derived. For example, in the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. In the case of a phone bank, the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted all candidates. 11 CFR §106.1(a).

Transfers from Non-Federal to Federal Campaigns. Transfers of funds or assets from a candidate's campaign committee for a non-federal election to his or her principal campaign committee for a federal election are prohibited. 11 CFR §110.3(d).

Facts and Analysis

The Candidate, an incumbent New York State legislator, filed his Statement of Candidacy on March 4, 2003 and designated KFC as his principal campaign committee.[3] KFC opened a bank account on May 15, 2003 and filed a Statement of Organization on July 2, 2003. On April 9, 2004, the Candidate publicly announced his intention to seek the Republican nomination for the Congressional seat being vacated by Representative Amory "Amo" Houghton, Jr. According to KFC, the delay between the registration of the federal campaign committee and the public announcement of candidacy was due to the timing of Representative Houghton's decision not to seek re-election.

For the period prior to the public announcement (May 2003 - March 2004), KFC raised contributions totaling $84,412 for the federal office while the State Committee raised $30,550 for the non-federal office. During the same period, KFC's disbursements totaled $12,095 for fundraising expenses, while the State Committee reported $106,673 in expenses.[4] KFC did not report or pay for any disbursements associated with overhead costs such as rent, salary, phones, and office supplies.

Shortly after the public announcement (April 2004), and through the general election (November 2004), the State Committee discontinued paying for overhead and administrative expenses. These expenses included such items as rent for office space, credit card bills, vehicle leases/insurance, postage, and phone service. In that same period, the State Committee received $5,100 in donations. During this time frame, KFC paid these expenses in full. After the general election, the State Committee resumed paying for many of these overhead and administrative costs, even though the Candidate was not seeking another term in the State Senate and had been elected to the U.S. House of Representatives.

The Audit staff reviewed the disclosure reports filed by the State Committee with the State of New York for the period March 1, 2003 through December 31, 2004. The Audit staff identified reported disbursements by the State Committee totaling $144,409, a portion of which appear to benefit the Candidate's federal campaign. The portion of such disbursements that appears to have benefited the federal campaign was $118,056. The following categories show the breakdown of these amounts based upon the allocation method applied by the Audit staff:

<u>Expenses Allocated Based on Documentation</u> – This category includes expenses supported by invoices and other documentation supplied by KFC which supported the actual benefit derived by each committee.

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[3] The Candidate was elected into the New York State Assembly in 1980 and served there until being elected to the State Senate in 1986. He was re-elected to the State Senate in 2002 for a two-year term and served there until 2004.

[4] This amount does not include contributions to non-federal candidates/committees or amounts categorized as "unitemized" on the State Committees reports.

• Advertisement	150
• Professional Fee Paid to KFC Treasurer	8,550
• Credit Card Purchases	258
• Poll (Allocated based on number of federal/nonfederal questions)[5]	14,016
	$22,974

Expenses Allocated Based on Funds Received Method – This category includes expenses allocated based on the funds (contributions) received by KFC and the State Committee. The percentage applied was 73% Federal ($84,412/$114,962) based upon $84,412 in contributions received by KFC divided by $114,962 in contributions received by both KFC and the State Committee -- between May 2003 and March 2004. In the view of the Audit staff, this was the best method available absent any other documentation. No alternative allocation method was offered by KFC.

• Credit Card Purchases	5,596
• Vehicle Lease/Insurance/Tolls	14,342
• Computer Hardware/Software	1,482
• Salaries & Benefits	7,789
• Office Rent	5,066
• Office Supplies	1,314
• Overhead Expenses	3,070
• Membership Dues	209
	$38,869

Expenses Allocated 100% Federal Based on the Nature of the Expenditures (1/1/2004 – 3/31/2004) – This category includes payments to McLaughlin and Associates (M&A) for consulting after the "NY 29th CD survey" (congressional district poll) was conducted by M&A to determine "likely Republican Primary voters." The Audit staff allocated 100% of these expenses to KFC based on the timing of the consulting payments. In addition to these payments paid by the State Committee, KFC paid a total of $427,128 to M&A from the federal account. The State Committee had not made payments to M&A prior to this poll. Also included in this category are payments at the end of March for computer hardware/ software just prior to the Candidate's April 2004 announcement to run for Congress.

• Consulting (see Footnote 5, p.8)	15,000
• Computer Hardware/Software	7,035
	$22,035

[5] KFC entered into an agreement effective on January 29, 2004 with McLaughlin and Associates, Inc. (M&A) to provide consulting services and advice regarding research, advertising, fundraising, press and media. Consulting fees totaling $15,000 for January, February and March 2004 were paid to M&A by the State Committee in February/March 2004 and were allocated 100% Federal by the Audit staff. Prior to the agreement, the State Committee paid M&A $19,200 in December 2003 for polling conducted in the 29th Congressional District. Interviews began November 19, 2003 and included questions to 400 "Likely Republican Primary Voters." The Audit staff determined that 73% (27/37) of the questions were related to the federal campaign and therefore allocated $14,016 ($19,200 x 73%) to KFC. Thirty of the 67 questions were considered generic and therefore were not allocated federal or non-federal.

Expenses Allocated 100% Federal Based on the Nature of the Expenditures (4/1/2004 – 11/4/2004) – This category includes payments that were paid by the State Committee while the Candidate was actively campaigning for Congress.

• Salaries & Benefits	249
• Office Supplies	657
• Overhead Expenses	407
• Advertisements/Memberships (No copies of ads provided)	775
• Credit Card Purchases	942
	$ 3,030

Expenses Allocated Based on KFC and the State Committee's Allocation of Payroll (11/5/2004 – 12/31/2004) – This category includes expenses that had been paid 100% federal prior to the General election. Since KFC and the State Committee used an allocation ratio of 59% Federal/41% State for the mid-November salaries of some employees, the Audit staff applied this ratio to the remaining salaries and office expenses to recognize wind down costs of the State office during this time period.

• Salaries and Benefits	9,312
• Office (Paid to an individual)	35
	$9,347

Expenses Allocated 100% Federal Based on the Nature of the Expenditures (11/5/2004 – 12/31/2004) – This category includes a loan payoff for a campaign vehicle. Since the Candidate won the election, allocation was considered 100% federal by the Audit staff.

• Vehicle Lease/Insurance/Payoff	14,047
• Credit Card Purchases	5,141
• Office Rent	200
• Postmaster Expenses	1,295
• Ads	875
• Overhead Expenses	243
	$21,801
Total Allocation to KFC (Federal)	$118,056

The Audit staff has determined that the share of expenditures (in-kind contributions) allocable to KFC appears to be prohibited because it represents a transfer of funds from a non-federal campaign to a federal campaign. None of the in-kind contributions were reported by KFC (see Finding 1).

KFC representatives were provided a copy of the supporting schedule detailing the expenditure allocation at the exit conference. A representative asked what would be required to resolve the prohibited in-kinds. The Audit staff stated that the recommendation would be to reimburse the non-federal committee for the federal share. The representative stated that the non-federal committee had already closed its bank accounts and filed a termination notice with the State of New York.

In response to the exit conference, KFC provided additional documentation to support changes to some of the allocations of shared expenses. Counsel for KFC (Counsel) stated KFC did not have to file disclosure reports until Mr. Kuhl became an "actual candidate for Federal office." According to Counsel, this was when Representative Houghton announced he would not seek re-election (April 2004). Although a committee does not have to file reports when the candidate is testing the waters, it is required to file reports detailing all expenses if the candidate officially decides to seek office. These reports must include those expenses associated with testing the waters (11 CFR§100.13(a)). Furthermore, Counsel did not agree with the methodology used to allocate the shared expenses between the two committees and asserted there is no legal basis for this allocation. He did not, however, provide an alternative for assignment of the shared costs.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KFC:

- Provide evidence that the expenditures were allocated according to the benefit reasonably expected to be derived by each campaign, or that the expenditures did not benefit the federal campaign, by submitting documentation and information about the actual usage and benefit derived by KFC and the State Committee. Such documentation and information was to include what each of the consultants and employees did for each campaign; the amount of time spent on those activities; and, evidence to establish which office space, equipment, and facilities were shared by the committees to support the benefit derived by each; or
- Provide evidence that the resulting in-kind contributions were not from a prohibited source; or
- Absent such evidence, the Audit staff recommended that $118,056 be paid to the U.S. Treasury, since the State Committee had terminated; and
- The amount due was to be disclosed on Schedule D (Debts and Obligations) until paid.

In response, KFC Counsel objects to this finding and argues that the Audit staff is wrong in the way the law has been applied. He states that "[t]he Report concocts an entirely new legal standard: after-the-fact allocation of state campaign spending that 'appeared to benefit the Candidate's federal campaign' " and that this "...approach is nothing more than a biased assumption stated in the form of a presumption: because a state officeholder/candidate ran for Federal office, the activity of the state campaign must have benefited the Federal campaign somehow, unless the Federal campaign can show otherwise." He continues that the Audit staff has not presented any factual support on how the state campaign activity equates to an in-kind contribution and that the stated purposes of the spending have been ignored.

Counsel also takes exception to the method by which the auditors applied an allocation ratio not based upon the actual benefit derived, but based upon the total amounts raised by the state and Federal campaigns. He states that there is no legal basis for this and cites the Supreme Court decision in the Wisconsin Right to Life case where he argues it was made clear that "...simply because a Federal candidate is mentioned in some sort of public communication does not convert that communication into campaign activity within the purview of the Commission."

Counsel further notes that the Commission concluded in Advisory Opinion (AO) 1999-11 that the "...events in which Federal officeholders participate in their capacities as officeholders are not for the purpose of influencing a Federal election simply because the officeholders may be candidates for election to Federal office." Counsel then adds that "...the Commission has already emphasized that the proper standard was express advocacy, and not your amorphous 'appearance of benefit' approach."

The Audit staff notes that pursuant to 11 CFR 106.1(a)(1), expenditures that did not entirely benefit KFC, but benefited both KFC and the State Committee, should be allocated between the committees based on the benefit reasonably expected to be derived by each campaign. The law requires an individual who is a candidate for both a federal and state office to designate separate committees and establish completely separate campaign organizations, and no transfers of funds, goods or services between the campaigns are permitted. The campaigns may share personnel and facilities as long as expenditures are allocated between the committees and the payments made from each campaign account reflect the allocation. Payments should be allocated to each federal and non-federal candidate, (or the same person who is seeking both federal and non-federal office) according to the benefit expected to be derived by each candidate. This is supported by AO's 1994-37 and 1978-67.

The Audit staff allocated some State Committee expenditures based on the actual usage and actual derived benefit when sufficient documentation was available. However, when documentation was not available to make these determinations, the Audit staff based these allocations upon alternative methods: 1) a fundraising allocation formula: the amount of contributions received by KFC compared to the total contributions received by KFC and the State Committee; 2) the nature and timing of the disbursements; and 3) the allocation of payroll expenses that KFC used in the middle of November, 2004. Due to the limited available information regarding the actual use and benefits derived from the expenditures, the Audit staff believed these were the most appropriate allocation methods available to complete this review. In its response to the interim audit report, KFC had the opportunity to propose and support a different allocation method and to demonstrate that some, or all, of these expenditures did not benefit KFC. KFC did not provide an alternative allocation, nor evidence that the expenditures in question did not require allocation, but rather argued.the basis of the staff's allocation of the in-kind contribution total.

As a result, no change was made to the amount of the apparent prohibited in-kind contributions presented in the interim audit report, $118,056.

The Commission agreed with the allocation of certain disbursements ($22,974; "Expenses Allocated Based on Documentation"), but there were not sufficient votes to adopt the alternative allocation methods that the Audit staff proposed.