



## FEDERAL ELECTION COMMISSION

1125 K STREET N.W.  
WASHINGTON, D.C. 20463

### REPORT OF THE AUDIT DIVISION ON THE COMMITTEE FOR BIRCH BAYH IN '76

#### I. Background

This report covers an audit of the Committee for Birch Bayh in '76 (the Committee) undertaken by the Audit Division of the Federal Election Commission to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(a)(8) of the Act and Section 9038(a) of Chapter 96 of the Internal Revenue Code of 1954. Section 438(a)(8) of the Act directs the Commission "to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this chapter, and with respect to alleged failures to file any report or statement required under the provisions of this chapter, and to give priority to auditing and field investigating of the verification for, and the receipt and use of, any payments received by a candidate under Chapter 95 or Chapter 96 of the Internal Revenue Code of 1954." Section 9038(a) of Chapter 96 provides 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."

The audit covered the period from August 5, 1975, the date the Committee registered with the Commission, through May 31, 1977. During that period, the Committee reported beginning cash-on-hand of \$-0-, total receipts of \$1,390,443.96, total expenditures of \$1,383,449.12 and ending cash of \$6,994.84.

In August of 1975, the Committee registered as the principal campaign committee for Senator Birch Bayh's presidential campaign. The principal officers at the time of the audit were The Honorable Matthew Welsh, Chairman, and Mr. Myer Feldman, Treasurer. The Committee maintained its headquarters in Washington, D.C.



This audit report is based on documents and working papers supporting each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report, and were available to Commissioners and appropriate staff for review:

## II. Findings and Conclusions

### A. Failure to Disclose Committee Repositories

#### Introduction

Sections 433(a) and (b)(9) of Title 2, United States Code states, in part, that each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding \$1,000, shall file with the Commission a statement of organization which shall include a listing of all banks, safety deposit boxes, or other repositories used. Section 433(c) requires that any change in information previously submitted in a statement of organization shall be reported to the Commission within a 10-day period following the change.

#### Discussion

The Committee made a total of \$14,441.00 in advance payments to three (3) of its representatives. These representatives deposited the funds received into bank accounts opened in their names and from which expenditures were made exclusively to conduct Committee business. These accounts were opened at the request of the Committee Comptroller who stated that this system was used to allow him to exercise some control over the funds advanced to these individuals. The Committee did obtain bills, invoices, contemporaneous memoranda and cancelled checks to support the expenditures made from the accounts.

The Comptroller told us he was unsure as to how transfers to field representatives of the Committee should be handled. He said that in consonance with instructions from a Commission staff member, he handled them as noted above.

Although the accounts were opened and maintained by individual Committee representatives, they were used exclusively to conduct Committee business. Therefore, we believe these accounts were in fact repositories of the Committee, and should have been disclosed as such. The Comptroller agreed to and has since filed an amended Statement of Organization disclosing the repositories.

Recommendation

Since the Committee has filed an amended Statement of Organization, no Commission action is recommended.

B. Improper Disclosure of Debts and Obligations

Introduction

Section 434(b)(12) of Title 2 of the United States Code states that "each report shall disclose the amount and nature of debts and obligations owed by or to the committee, in such form as the Commission may prescribe, and a continuous reporting of debts and obligations after the election at such periods as the Commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefor."

Discussion

Committee reports covering the periods July 1, 1976 through March 30, 1977, contained 160 debts which were omitted from subsequent debt and obligation schedules with no apparent explanation as to the disposition of these items. The debts had been outstanding for at least three (3) months and were owed to both individuals and business entities. Further review showed that at least 72 of the 160 debts had been settled for amounts less than the original amount incurred. The payments were disclosed as expenditures on Committee reports. The forgiven amount of each debt was disclosed as an "in-kind contribution based on debt settlements."

For the disposition of some of the remaining debts, the payments were neither disclosed nor was there an explanation of their omission from the report's debt and obligation schedules. We found either that payments to liquidate these debts were in amounts of less than \$100 and did not meet the expenditure itemization requirements or that the debts were forgiven in full with the entire amount being disclosed as an "in-kind contribution based on debt settlements."

Fifty-one of the 160 debts disclosed represented corporate debt settlements. These settlements were for amounts less than the original amounts incurred and each included a statement as to the circumstances and conditions under which these debts were extinguished. They have been submitted to the Commission in accordance with Section 114.10(c) of Title 11, Code of Federal Regulations, and are currently a part of the public record.

The Committee's treatment and disclosure of the remaining 109 items mentioned above did not include a statement as to the circumstances and conditions under which these debts and obligations were extinguished. Therefore, the omission of the required information results in less than adequate disclosure of Committee debts and obligations.

A Committee official told us he felt he had complied with the Act. He pointed out that the information was included in the reports in the form of a payment and/or contribution in-kind.

We recommended to the Treasurer that he amend the Committee's reports to remove from Schedule A all those items listed as "in-kind contributions based on debt settlements." We recommended that these items be shown on Schedule C as memo entries.

#### Recommendation

The Committee was directed on January 26, 1978 to file amendments disclosing the debt settlements as recommended. The appropriate amended reports were filed March 3, 1978; therefore, we recommend no further action be taken on this matter.

#### C. Failure to Disclose Occupation/Principal Place of Business

##### Introduction

Section 434(b)(2) of Title 2 of the United States Code provides in part that each report shall disclose the full name and mailing address (occupation and principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate within the calendar year in an aggregate amount or value in excess of \$100. Section 434(b) provides that when committee treasurers and candidates show that best efforts have been used to obtain and submit the information required by this subsection, they shall be deemed to be in compliance with this subsection.

##### Discussion

The Committee disclosed the occupation and principal place of business for 86 percent or more of all contributors listed as contributing in excess of \$100 in each report covering the periods August 5, 1975 through November 30, 1976, and January 1, 1977 through May 10, 1977. However, the Committee's 1976 Year End Report contained the occupation and principal place of business for less than 66 percent of all items listed. According to a Committee official, the contributions lacking this information were collected at a fundraising event. He stated that the purchasers of tickets to the event did not always provide the required information and in some cases may not have been aware of the requirements of the Act.

The Committee has attempted to obtain the required information via letters and/or telephone calls to contributors. As a result of these efforts, two amendments have been filed since the close of our field work. Further, the Committee has continued its efforts and plans to submit additional amendments.

In our opinion, the Committee's 1976 Year End Report lacks a substantial portion of the required contributor information. However, the Committee's overall disclosure has been sufficient, and we believe the Committee has demonstrated "best efforts" to obtain the required information for the Year End 1976 report.

#### Recommendation

In view of the fact that Committee officials have filed two amendments and have stated their plans to continue their efforts to obtain the required information, we recommend that no further action be taken on this matter.

#### D. Apparent Unqualified Campaign Expense

##### Introduction

Section 432(d) of Title 2 of the United States Code requires that it shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of \$100 in amount, and for any such expenditure in a lesser amount if the aggregate amount of such expenditures to the same person during a calendar year exceeds \$100.

Section 9038(b)(2) of Title 26 of the Internal Revenue Code of 1954 provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than -

a) to defray the qualified campaign expenses with respect to which such payment was made; or

b) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary or his delegate an amount equal to such amount.

Finally, Section 9032(9)(A) defines a "qualified campaign expense", in part, as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred by a candidate, or his authorized committee, in connection with his campaign for nomination for election.

### Discussion

After reviewing all committee expenditures, we found that the Committee did not obtain and keep a receipted bill, invoice or acceptable contemporaneous memorandum in support of nine (9) expenditures totalling \$7,812.75. These expenditures were made to vendors and individuals for such purposes as personal services and advertising. Each expenditure was supported by a cancelled check and a journal entry voucher which the Committee used as part of its accounting system. The voucher normally contained the name of the payee, date, amount, check number, and a general purpose of the expenditure. However, in at least four instances the voucher contained no purpose.

According to the Comptroller, the Committee was not always able to obtain receipted bills. Some expenditures required prepayment, while others were made with the understanding that receipted bills would be provided. He said that those transactions often resulted in repeated efforts to obtain the promised documents.

On January 26, 1978, the Commission preliminarily determined that absent documentation to the contrary, the insufficiently supported expenditures would be viewed as unqualified and the value (\$7,812.75) would be repayable in full to the U.S. Treasury. The Committee subsequently submitted acceptable documentation to establish connection with the campaign for the above amount.

### Recommendation

We recommend that the Commission find the Committee has obtained acceptable documentation for the above expenditures as required by 2 U.S.C. 432(d), and with respect to 26 U.S.C. 9038(b)(2) and 9032(9)(A) that the documentation is sufficient to establish the expenditures' connection to the campaign; thereby requiring no repayment of matching funds to the United States Treasury.

E. Net Campaign Obligations

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary or his delegate an amount equal to the amount of excess payments.

The Commission determined that Senator Birch Bayh's candidacy for the Democratic Presidential nomination effectively terminated on May 11, 1976. The candidate was thus prohibited from making any expenditure from Federal matching funds after the above date which was not incurred or contracted for prior to that date.

Committee records show a net outstanding obligation of \$243,735.40 on the candidate's date of ineligibility. As of January 21, 1977, the Committee had remaining net outstanding campaign obligations of \$162,313.14. The candidate received \$76,510.85 in matching funds after January 21, 1977. Hence, no payments in excess of eligibility were received by the candidate.

III. Auditor's Statement

Except for the matters specifically noted in this report, the audit disclosed that the Committee conducted its activities in conformity with the Federal Election Campaign Act of 1971, as amended, and in conformity with Chapter 96 of Title 26, United States Code, in all material aspects.



FEDERAL ELECTION COMMISSION

1125 K STREET NW.  
WASHINGTON, D.C. 20463

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✓  
June 7, 1978

Honorable Birch Bayh  
United States Senate  
363 Russell Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Bayh:

Enclosed for your information is a copy of the final audit report of the Committee for Birch Bayh in '76 which was approved by the Commission on May 23, 1978. Upon notice of your receipt of this letter the report will be publicly released.

Sincerely,

*for Joseph F. Staff*  
Robert J. Costa  
Assistant Staff Director  
for the Audit Division

Enclosure as stated

CERTIFIED MAIL:  
RETURN RECEIPT REQUESTED





