FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION

ON

THE BENTSEN IN '76 COMMITTEE

I. BACKGROUND

This report covers an audit of the Bentsen Committee Fund and its successor, the Bentsen in '76 Committee, undertaken by the Audit Division to determine whether there has been compliance with the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of the Act, which directs the Commission to give priority to auditing of the verification for, and the receipt and use of, any payments received by a candidate under Chapters 95 or 96 of the Internal Revenue Code of 1954, and by authority of Section 9038(a) which directs the Commission after each matching payment period to conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees that received payments under Section 9037.

The audit covered the period from January 1, 1975, the effective date of the Act, through June 30, 1976. The Committee reported beginning cash on hand of $652,951.65, total receipts of $1,662,070.27, total expenditures of $2,311,182.41, and ending cash on hand of $3,839.51 for the period.

The principal officers of the Committee during the period covered by the audit included Mr. William H. Lane, Chairman, and Mr. Larry Letscher, Comptroller. Mr. Jack S. Blanton was Treasurer of the Committee during the period January 1, 1975, through June 30, 1975, while Mr. Shannon H. Ratliff served as Treasurer from July 1, 1975 through the close of the period covered by the audit.

II. Findings and Conclusions

A. Bentsen Office Account

Section 9038(b)(2) of Title 26 of the United States Code (26 U.S.C. 9038(b)(2)) provides, in relevant part 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. On March 10, 1977, the Commission determined that as a matter of policy the provisions of Section 9038(b)(2) apply to expenses incurred prior to the receipt of primary matching funds by Presidential candidates under Section 9037. With respect to the 1976 election, the restriction would extend to those expenditures incurred on or after January 1, 1975, the effective date of the Act as amended. Furthermore, the Commission determined to consider the circumstances surrounding the incurrance of non-qualified campaign expenses on a case by case basis in applying its general policy.

Senator Bentsen filed his statement of candidacy on February 10, 1975, designating the Bentsen in '76 Committee (formerly the Bentsen Committee Fund) as the principal campaign committee for his Presidential campaign. However, the Bentsen Committee Fund and two predecessor Committees had been receiving contributions throughout 1974. In addition to the campaign accounts maintained by the Committee, Senator Bentsen established an Office Account in April, 1975, to separate official Senate expenses from political expenses. Written documentation provided during the audit stated that "the Office Account would be established with funds received in the campaign account during 1974 since solicitation of those funds was made on the basis that the funds would be utilized for purposes of political campaigning or transactions directly relating to Senate business."

However, the transfer of funds from the campaign account to the Office Account was not made in one lump sum; rather between January 1, 1975, and October 7, 1975, the Committee expended $97,918.89 on behalf of the Office Account, including $68,000.00 in direct transfers to the Office Account and an additional $29,918.00 in expenditures made directly to vendors or others who had provided goods or services to the Office Account. After October 7, 1975, Senator Bentsen's Senatorial campaign assumed responsibility for the Office Account expenses.

The Office Account transfers and expenditures were clearly not qualified campaign expenses which are defined in 26 U.S.C. 9032(9) as a "purchase, payment, etc . . . of money or anything of value incurred by a candidate or by his or her authorized committee, in connection with his or her authorized campaign for nomination for election, so long as neither the incurring or paying is in violation of Federal or state law." Although the Office Account may have been established in conformity with 2 U.S.C. 439a and Senate Rule 42, there is no suggestion that the Office Account activity was campaign related. In fact, notations on documentation provided by the Committee during the audit specifically identified the expenses as "not campaign expenses." Therefore, in accordance with the Commission's general policy determination of March 10, 1977, the $97,918.89 in expenditures which would not represent "qualified campaign expenses" would be repayable to the Treasury.

However, in this specific case, there were additional factors which were considered by the Commission. The Committee's position on this matter is that all of the transfers or expenditures incurred by the Committee on behalf of the Office Account during 1975 should be viewed as made from the $652,000 cash-on-hand on January 1, 1975, rather than from funds received after that date, since it had anticipated establishing the Office Account from funds on hand during 1974. Therefore, adopting the Committee's position would not require any repayment.

A contrary interpretation is that since the transfers and expenditures on behalf of the Office Account were made by the Committee throughout the first nine months of 1975, together with several hundred thousand dollars of Presidential campaign expenditures, the funds became fungeable, i.e., non-separable. All of the funds expended by the Committee on behalf of the Office Account were made from cash-on-hand on January 1, 1975, were received during 1975 by the Committee, and were deposited in the account with the funds collected during 1974. Accordingly, under this theory, all of the $97,918.89 in transfers and expenditures on behalf of the Office Account would be viewed as not qualified campaign expenses and repayable to the U.S. Treasury.

However, viewing the first $652,000 expended by the Committee during 1975 as representing the funds maintained by the Committee on December 31, 1974, produces a third alternative of determining that only funds expended thereafter are repayable if spent for other than "qualified campaign expenses". In this case, the $652,000 was expended from the campaign account as of June 23, 1975, including $78,783.39 in transfers and expenditures on behalf of the Office Account. The remaining $19,135.50 in transfers and expenditures on behalf of the Office Account were made thereafter and would be repayable to the Treasury.

Recommendation

The Audit Division recommended that the Commission determine that the $19,135.50 in funds transferred and expended by the Committee on behalf of the Office Account after June 23, 1975, be repaid to the Treasury on the basis that they were made from funds received after January 1, 1975, and were subject to the "qualified campaign expense" requirement. As a result, the Commission accepted the staff recommendation and notified Senator Bentsen that it had preliminarily determined that a repayment of $19,135.50 should be made. However, after consideration of Senator Bentsen's legal position on this matter, the Commission determined that no repayment was required based on the fact that the Committee had cash-on-hand on January 1, 1975, in excess of the total transfer to and expenditures made by the Committee on behalf of Senator Bentsen's Senatorial Office Account, and on the fact that Senator Bentsen rejected some $61,000 in Federal primary matching funds to which he was entitled after he withdrew from seeking the nomination for election to the Office of President in the 1976 election.

B. Reporting of Debts

Section 434(b)(12) of the Act requires that each report disclose the amount and nature of debts and obligations owed by or to the Committee on a continuous basis until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debts and/or obligations are extinguished and the consideration thereof.

Review of the Committee's reports showed that numerous debts and obligations which were initially reported as owed by the Committee were not reported in a continuous manner until each was extinguished. Our review showed that the Committee records documented adequately the dissolution of the debts, which in total amounted to more than $12,000. Furthermore, in each instance any payments made toward reducing the debts were disclosed under the expenditure section of the report. However, it was not possible to identify the payments as reductions of previously reported debts, since many of these payments represented unitemized expenditures, or in other cases the payment of a previously reported debt was included with the payment of other expenses incurred with a given payee.

The Committee was requested to submit an amendment to properly disclose the dissolution of the debts on its debt schedule. The amendment was filed on July 26, 1977. Accordingly, we recommended no further action be taken on this matter.

C. Repayments

Part 134.3(c)(2) of the Commission's Regulations provides that if on the last day of candidate eligibility there are net outstanding campaign obligations, any matching payments received may be retained for a period not exceeding six months after the end of the matching payment period in order to liquidate those obligations. Any amounts paid which are not used to liquidate the net outstanding campaign obligations within 6 months shall be repaid to the Treasury 30 days thereafter.

The Commission has determined May 11, 1976, to be the day on which Senator Bentsen's candidacy terminated. He then became ineligible to receive matching payments other than to defray qualified campaign expenses incurred prior to that date. However, the Committee had not requested matching funds after February 25, 1976, the date on which the candidate informed the Commission that he would not accept any additional matching funds, including those already submitted, but not certified.

Since the Committee had net outstanding campaign obligations on May 11, 1976, and received no public funds thereafter from the Treasury, no repayment is required under the provisions of Part 134.3(c)(2).

Section 9038(b)(2) of Title 26 of the U.S. Code (26 U.S.C. 9038(b)(2)) and Part 134.2 of the Regulations provide that if the Commission determines that any portion or amount of any payment made to a candidate from the matching payment account was used for any purpose other than:

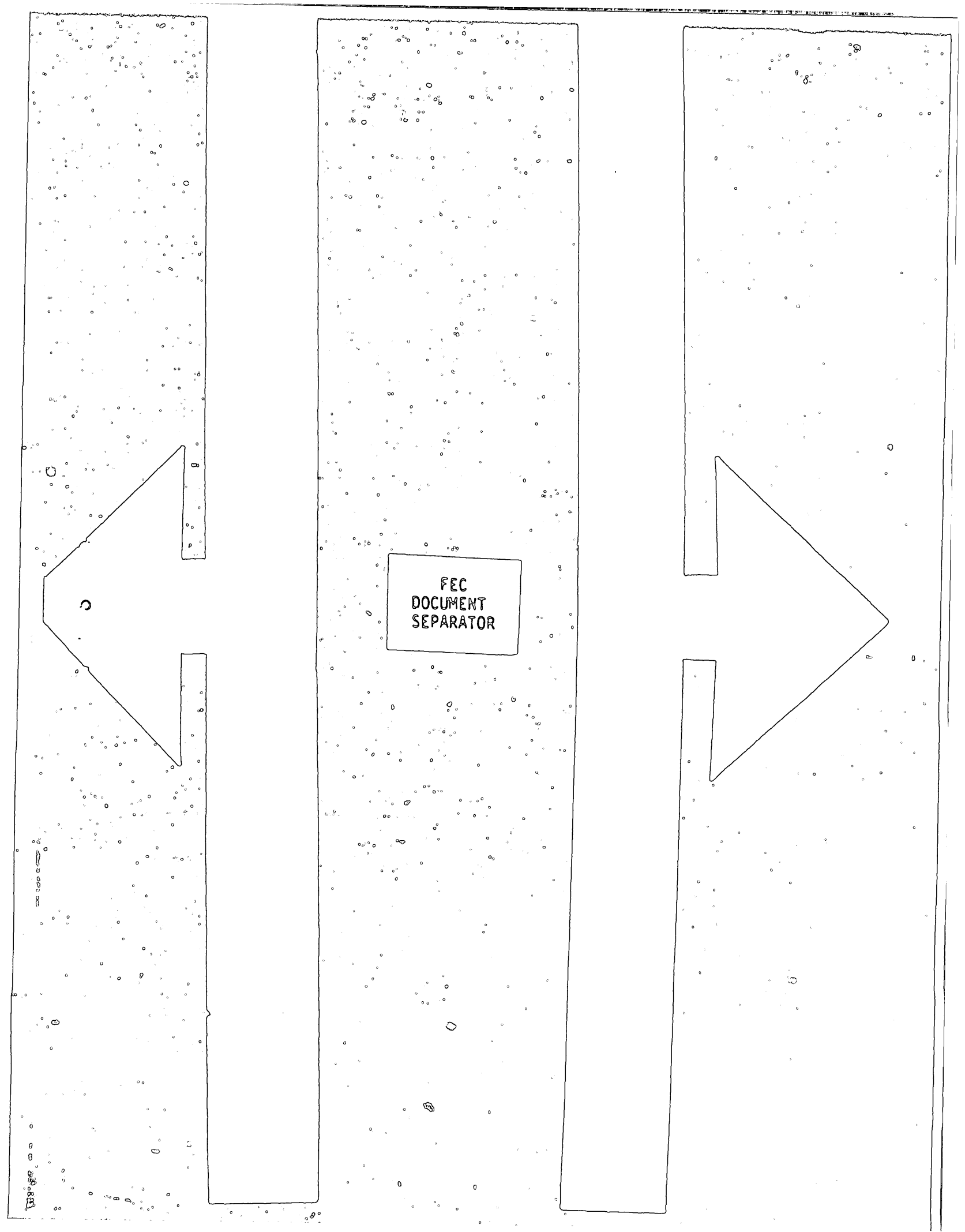
1) to defray the qualified campaign expenses with respect to which such payment was made; or

2) 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; shall notify the candidate of the amount so used, and the candidate shall pay to the Secretary or his delegate an amount equal to such amount.

Our review disclosed that the Committee disbursed no funds for other than qualified campaign expenses with the exception of those expenses discussed in Finding A above. However, the Commission determined that in the light of the factors mentioned in Finding A, it would not require a repayment by Senator Bentsen under Section 9038(b)(2)).

III. Auditor's Statement

Except for the matters specifically noted in this report, the audit disclosed that the Bentsen in '76 Committee conducted their activities in conformity with the Federal Election Campaign Act of 1971, as amended, and in conformity with Chapter 96 of Title 26, U.S.C., in all material aspects.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