FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

July 8, 1997

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON ALEXANDER FOR PRESIDENT, INC., ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE, INC., AND ALEXANDER AUDIT FUND, INC.

Attached please find a copy of the audit report and related documents on Alexander for President, Inc., Alexander for President Compliance Committee, Inc., and Alexander Audit Fund, Inc. which was approved by the Commission on June 19, 1997.

Informational copies of the report have been received by all parties involved 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

REPORT OF THE AUDIT DIVISION

ON

Alexander for President, Inc.
Alexander for President Compliance Committee, Inc.
and
Alexander Audit Fund, Inc.

Approved June 19, 1997

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

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REPORT OF THE AUDIT DIVISION ON ALEXANDER FOR PRESIDENT, INC., ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE, INC., AND ALEXANDER AUDIT FUND, INC.

EXECUTIVE SUMMARY

Alexander for President Committee, Inc. (the Primary Committee) registered with the Federal Election Commission on January 19, 1995. In addition, the Alexander for President Compliance Committee, Inc. (the Compliance Committee) and the Alexander Audit Fund, Inc. (the Fines Committee) registered with the Federal Election Commission on January 23, 1995 and March 18, 1996 respectively.

The audit was conducted pursuant to 26 U.S.C. §9038(a), requiring the Commission to audit committees authorized by candidates who receive Federal Funds. The Candidate received $4,573,444 in matching funds from the U.S. Treasury.

The findings of the audit were presented to the Committees at an exit conference held at the completion of field work and later, in an Exit Conference Memorandum. The Committees' responses to those findings are contained in the audit report.

The following is an overview of the findings contained in the audit report.

APPARENT CONTRIBUTIONS RESULTING FROM UNTIMELY PAYMENTS FOR TRAVEL ON CORPORATE AIRCRAFT — 2 U.S.C. §441b(a) and 11 CFR §§100.7(a)(1)(iii) and 114.9(e). A review of travel on corporate aircraft utilized by the Primary Committee identified costs incurred that were not fully paid in advance. All of the travel in question occurred in late 1994 and early 1995. The Primary Committee's Treasurer explained that the staff person who handled travel in the early days of the campaign misunderstood the regulatory requirements. The Primary Committee discovered and corrected the errors prior to the audit. The amount not timely paid was $17,618.

APPARENT NON-QUALIFIED CAMPAIGN EXPENSES - COMPLIANCE COMMITTEE EXPENSES PAID BY THE PRIMARY COMMITTEE — 11 CFR §§9032.9(a) and 9034.4(b)(3). The Audit staff noted that the Primary Committee made two disbursements totaling $6,535 for expenses incurred by the Compliance Committee. The Primary

Committee argued that the Commission's regulations are inconsistent in that they do not allow such expenses to be paid by the Compliance Committee if the Candidate is not successful, and yet regard the expenses as non-qualified campaign expenses if paid by the Primary Committee. Nonetheless, the Primary Committee acknowledged that under the regulations these expenses are non-qualified. The Commission determined that a prorated portion of the amount ($1,469) is repayable to the U.S. Treasury.

MATCHING FUNDS RECEIVED IN EXCESS OF ENTITLEMENT — 11 CFR §§9034.1(b) and 9038.2(b)(1). Audit staff calculated that the Candidate received matching funds in excess of his entitlement totaling $835,338. The excess resulted primarily from the Primary Committee's overstatement of estimated winding down expenses on its Statement of Net Outstanding Campaign Obligations. The Commission determined that this amount was repayable to the U.S. Treasury. A repayment of $631,977 was received on February 4,1997, leaving a balance of $203,361.

STALE-DATED CHECKS — 11 CFR §§9038.6 and 9007.6. The Audit staff identified checks issued by the Primary Committee and the Compliance Committee totaling $37,966 and $12,200 respectively, that had not been negotiated. The Committees paid these amounts to the U.S. Treasury on November 15, 1996, and December 11, 1996. Subsequently, a $1,000 check issued by each committee was negotiated, reducing the amount due to $36,966 and $11,200 respectively. The Commission determined that the lesser amount was payable to the U.S. Treasury and the overpayments were credited to other amounts due.

ALEXANDER AUDIT FUND, INC. (FINES COMMITTEE)

The Audit staff did not detect any material non-compliance during the audit of the Fines Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

REPORT OF THE AUDIT DIVISION ON ALEXANDER FOR PRESIDENT, INC., ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE, INC., AND ALEXANDER AUDIT FUND, INC.

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Alexander For President, Inc., (the Primary Committee), Alexander For President Compliance Committee, Inc., (the Compliance Committee), and Alexander Audit Fund, Inc., (the Fines Committee). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states 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." Also Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act of 1971, as amended.

B. AUDIT COVERAGE

The audit covered the period from the Primary Committee's inception, November 9, 1994, through April 30, 1996. During this period, the Primary Committee's disclosure reports reflect an opening cash balance of $-0-, total receipts of $20,000,077,[1] total disbursements of $19,330,094 and a closing cash balance of $669,983. In addition, a limited review of the Committee's records and disclosure reports filed through January 31, 1997 was conducted for purposes of determining the Committee's remaining matching fund entitlement based on its financial position.

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[1] Figures in this report are rounded to the nearest dollar.

The audit of the Compliance Committee covered the period from its inception, February 15, 1995, through January 31, 1996. The Compliance Committee reported an opening cash balance of $-0-; total receipts of $130,507; total disbursements of $130,507; and a closing cash balance of $-0-. The Compliance Committee made nominal disbursements for bank account fees.

The audit of the Fines Committee covered the period from its inception, April 17, 1996, through January 31, 1997. The Fines Committee reported an opening cash balance of $-0-; total receipts of $94,479 and a closing cash on hand of $94,479.

C. CAMPAIGN ORGANIZATION

1. Primary Committee

The Primary Committee registered with the Federal Election Commission on January 19, 1995. The Treasurer of the Primary Committee is Todd Eardensohn. During the campaign, the Primary Committee's office was located in Nashville, Tennessee. After the campaign, the Primary Committee's headquarters was moved to Alexandria, Virginia.

To manage its financial activity, the campaign maintained fourteen bank accounts at various times. From the fourteen accounts, the Primary Committee issued approximately 7,100 checks in payment for goods and services. Also, the Primary Committee received approximately 31,400 contributions totaling $12,932,479 from roughly 26,280 individuals. The Primary Committee also accepted $297,767 from 141 political committees.

In addition, the Candidate received $4,573,444 in matching funds from the United States Treasury. This amount represents 30% of the $15,455,000 maximum entitlement. The candidate was determined eligible to receive matching funds on May 31, 1995. The Primary Committee made a total of twelve matching fund requests totaling $4,623,333. The Commission certified 99% of the requested amount. For matching fund purposes, the Commission determined that Governor Alexander's candidacy ended March 6, 1996. This determination was based on a public statement by the Candidate.

2. Compliance Committee

The Compliance Committee registered with the Federal Election Commission on January 23, 1995. The Treasurer of the Compliance Committee from its inception is Todd Eardensohn. The Compliance Committee used one depository and maintained one bank account; received contributions totaling $130,420 from approximately 200 persons; and transferred $77,270 in contributions to the Fines Committee and wrote $53,150 in refund checks to contributors.

3. Fines Committee

The Fines Committee registered with the Federal Election Commission on March 18, 1996. The Treasurer of the Fines Committee from its inception is Todd Eardensohn. The Fines Committee maintained one bank account and received contributions totaling $94,479 from approximately 140 persons. As of January 31, 1997, the Fines Committee had not made any disbursements.

II. AUDIT SCOPE AND PROCEDURES

In addition to a review of the Primary Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred by the campaign, the audits covered the following general categories, as appropriate, for each committee:

1. The receipt of contributions or loans in excess of the statutory limitations;

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding III.A.1.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;

7. adequate recordkeeping for campaign transactions;

8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the Primary Committee to disclose its financial condition and establish continuing matching fund entitlement (see Findings III.B.2., III.B.3.);

9. the Primary Committee's compliance with spending limitations; and

10. other audit procedures that were deemed necessary in the situation (see Findings III.B.1., III.B.4. and IV.A.).

As part of the Commission's standard audit process, an inventory of campaign records was conducted prior to the audit fieldwork. This inventory was conducted to determine if the auditee's records were materially complete and in an auditable state. Based on our review of records presented, it was concluded that the records were materially complete and fieldwork began immediately.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

III. ALEXANDER FOR PRESIDENT, INC.

A. AUDIT FINDINGS AND RECOMMENDATIONS NON - REPAYMENT MATTERS

1. Apparent Contributions Resulting from Untimely Payments for Travel on Corporate Aircraft

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR §100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Section 114.9(e) of Title 11 of the Code of Federal Regulations states that a candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization, in the case of travel to a city served by regularly scheduled commercial service, the first class air fare and in the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

A review of travel on corporate aircraft utilized by the Primary Committee identified costs incurred that were not fully paid in advance as required by 11 CFR §114.9(e). All of this travel occurred in late 1994 and early 1995. The portion of the travel costs not paid in advance totaled $17,618 and involved two corporations; the

Pilot Oil Company, $11,927, and the Textile Rubber and Chemical Company, $5,691. All of the charges were outstanding for more than a year.

The Primary Committee's Treasurer explained that the staff person who handled travel in the early days of the campaign misunderstood the requirements of 11 CFR §114.9(e). In a number of instances, only the Candidate's travel expense was paid rather than that of all campaign travelers. The Treasurer further explained that when the underpayments came to his attention, the outstanding balances were calculated and the amounts were paid. No amounts were outstanding at the time of audit fieldwork.

This matter was discussed at a conference at the close of fieldwork and schedules were provided to Primary Committee representatives that showed the calculation of the apparent corporate contribution. In the Exit Conference Memorandum, the Audit staff recommended the Primary Committee submit any comments or documentation it felt might be relevant.

In response, the Primary Committee stated, in part,

> "Shortly after its inception (in late 1994 and early 1995), the Primary Committee made use of corporate aircraft for certain campaign-related travel. As is often the case in the initial stages of a presidential campaign, the staff in charge of coordinating campaign-related travel during this early period did not have experience with the Commission's regulations. Yet, in all but one isolated incident, the corporations supplying aircraft were correctly reimbursed in advance for candidate airfare during the start-up period. Unfortunately, the staff person coordinating the travel at the inception of the campaign did not understand the necessity of prepaying for campaign-related passengers other than the candidate, as required by 11 C.F.R. 114.9(e)(1), and thus did not submit advance payments for passengers other than the candidate. During a subsequent review of the flight manifests, the Treasurer discovered that these additional passengers had not been included in the Primary Committee's original advance payments. Immediately upon this discovery, the underpayments were calculated and additional payments were submitted to the two corporations involved. These remedial steps were taken voluntarily by the Primary Committee, not at the direction of the Commission staff. The Primary Committee acknowledges that 11 C.F.R. 114.9 requires reimbursement in advance of first class airfare for a "candidate, candidate's agent, or person traveling on behalf of a candidate." Nevertheless, the Primary Committee respectfully requests that no further action be taken by the Commission for the following reasons:
>
> (i) The underpayments in question took place during the early stages of the campaign;

(ii) Once permanent compliance procedures and personnel were in place, no similar incidents occurred; and

(iii) Upon discovery of the underpayments, the Primary Committee voluntarily researched and calculated the correct amounts and fully reimbursed the two corporations immediately."

In sum, the Primary Committee voluntarily corrected these early oversights immediately upon their discovery. Of its own accord, it provided to the Audit staff all the schedules which calculated the underpayments of the flights in question.

Further, it is the contention of the Primary Committee that the amount in question pertaining to the late payments to the two corporations is overstated by $4,611. The $4,611 represents an itinerary change for a flight dated February 24, 1995, which the Primary Committee contends was paid as soon as the Treasurer received notice of the itinerary change. This would result in a remaining amount of $13,007. Finally, the Primary Committee states that it paid $1,392,708 in air travel cost of which late payments of $13,007 would represent less than 1% of the total amount spent on air travel by the Primary Committee.

The Audit staff acknowledges that the Primary Committee did voluntarily reimburse the underpayments to the corporations in question and did so during the active campaign. In addition, we acknowledge that an itinerary change did arise that prevented the Primary Committee from prepaying for travel on the one trip. However, the Primary Committee did not make payment for this itinerary change until March 1, 1996, which is more than one year after the trip. We feel that based on the amount of time which elapsed before reimbursement, a contribution still occurred and thus, the Primary Committee still received contributions totaling $17,618.

Further, the Audit staff does not dispute the Primary Committee's amount paid for air travel. However, we do note that this amount represents all air travel including commercial and charter aircraft. The total amount involved for travel on corporate aircraft was only $81,428. Thus, the contribution amount would represent 22% ($17,618/$81,428) of the total amount paid for travel on corporate aircraft.

B. AUDIT FINDINGS AND RECOMMENDATIONS AMOUNTS DUE TO THE U.S. TREASURY

1. Apparent Non-Qualified Campaign Expenses - Compliance Committee Expenses Paid by the Primary Committee

Section 9032.9(a) of Title 11 of the Code of Federal Regulations, in part, defines a qualified campaign expense as one incurred by or on behalf of the candidate from the date the individual becomes a candidate through the last day of the candidate's eligibility; made in connection with his campaign for nomination; and neither the incurrence nor the payment of which constitutes a violation of any law of the United States or the State in which the expense is incurred or paid.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR §9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR §9034.4(a)(3). In addition, any expenses incurred before the candidate's date of ineligibility for goods and services, to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

During the Audit staff's review of disbursements by the Primary Committee, the Audit staff noted two disbursements totaling $6,535 pertaining to activity for the Compliance Committee. The Compliance Committee is a general election legal and accounting compliance fund established pursuant to 11 CFR §9003.3(a).

First, the Audit staff noted an agreement between "Alexander for President Compliance Committee, Inc." and Agnes Warfield, dated February 1, 1996, which stated, in part, "the Committee (the Compliance Committee) wishes to employ Warfield to raise funds for it." Along with the agreement was a check authorization form in the amount of $1,000 dated April 15, 1996. The purpose on the form reads "Contract-Compliance Fundraising". The second item identified by the Audit staff as Compliance Committee activity paid by the Primary Committee was contained on an invoice from ACS, Inc. dated May 1, 1996 in the amount of $148,673. ACS, Inc. handled the processing and reporting of contributions for the Primary Committee, Compliance Committee and the Fines Committee. Identified on the invoice under the description of "Processing Fees and Expenses" was the item "Compliance Committee Processing $5,535."

This matter was presented to Primary Committee representatives at a conference at the conclusion of fieldwork. These representatives were provided with supporting documentation for these items.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee submit evidence documenting that the above expenditures were qualified campaign expenses. Absent such a demonstration, the Audit staff noted that it would recommend that the Commission make a determination that the Primary Committee make a pro-rata repayment to the United States Treasury pursuant to Section §9038(b)(2) of Title 26 of the United States Code.

In response to the Exit Conference Memorandum, the Primary Committee stated, in part,

> "The non-qualified payments cited in the Memorandum resulted from an internal inconsistency in the Commission's regulations. Governor Alexander, before he withdrew from the race, established the Compliance Committee (as permitted under 11 CFR 9003.3(a)(1)(i)), primarily as a depository for redesignated excessive contributions to the Primary Committee. Virtually all of the non-qualified costs cited in the Memorandum were the administrative costs of redesignating these excessive contributions. Upon Governor Alexander's withdrawal from the race, these costs were still unpaid. The Treasurer found, however, that the costs could not be paid from the Compliance Committee's accounts because regulations require that all funds in the Compliance Committee accounts had to be returned to the contributors. 11 C.F.R. 102.9(e)(2). Rather than leaving the creditors of the Compliance Committee unpaid, the Treasurer choose to pay the costs from the Primary Committee. The Primary Committee concedes, therefore, that expenditures it made on behalf of the Compliance Committee were "non-qualified" under the Commission's rules. The Primary Committee argues, however, that the rules lead to an illogical result. The rules allow a candidate to establish a compliance committee before he secures the nomination, but they penalize candidates who fail to secure the nomination. This inconsistency forces an unsuccessful candidate who prudently chooses to establish a repository for redesignated contributions to choose between paying his debts or making non-qualified expenditures."

Although the Primary Committee argues that the Commission's regulations are inconsistent, it acknowledges that under those regulations these expenses are non-qualified.

Recommendation #1

The Audit staff recommends that the Commission determine that the Primary Committee is required to repay $1,469 (($1,000+$5,535)x.224799)[2] to the U.S. Treasury pursuant to Section 9038(b)(2) of Title 26 of the United States Code.

2. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 days of the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other things, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs. Subsection (b) of this section states, in part, that the total outstanding campaign obligations shall not include any accounts payable for non-qualified campaign expenses.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Governor Alexander's date of ineligibility was March 6, 1996. The Primary Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) which reflected a $2,599,104 deficit at March 6, 1996. Initially, the Audit staff reviewed the Primary Committee's financial activity through September 30, 1996, analyzed estimates of winding down costs prepared by the Primary Committee and developed a NOCO statement which showed a remaining entitlement on March 6, 1996 of $1,986,360. As a result, in the Exit Conference Memorandum. it was calculated that the Candidate had received matching funds in excess of entitlement totaling $812,799.

The major differences between the Primary Committee's NOCO statement and the Audit staff's calculation were the amount of estimated winding down costs ($1,745,415 by the Primary Committee compared to the Audit staff's estimated winding down costs of $1,218,309) and the valuation of its assets, particularly its telephone and computer systems. Section 9034.5 of Title 11 of the Code of Federal Regulations states, in part, that capital assets should be valued at 60% of cost if purchased before the candidate's date of ineligibility.

In response to the Exit Conference Memorandum, the Primary Committee did not disagree with the Audit staff's valuation of estimated winding down cost. However, the Primary Committee stated that it believed the "bright line" depreciation test overstated the value of its assets causing the Net Outstanding Campaign

[2] This figure (.224799) represents the Committee's repayment ratio as calculated pursuant to 11 CFR §9038.2(b)(2)(iii)(B).

Obligations Statement to be understated. The Primary Committee feels that this understatement gives the impression that the Candidate has received matching funds in excess of entitlement.

The Primary Committee further contends that 11 CFR §9034.5 does not pertain to it. The response cites the Federal Register Vol. 60 No. 116 which states, in part, that "the Commission is adopting a bright line 40% depreciation figure for capital assets that are used in both the primary and the general election campaigns." It contends that since the Candidate did not participate in the general election the depreciation standards do not apply to its capital assets.

The Audit staff notes that the Explanation and Justification for Regulations on Public Financing of Presidential Primary and General Election Candidates (the E&J) does include the language found in the Primary Committee's response. That section explains one of the rationales used in changing the regulations, but does not state that it applies only to committees whose candidate is also a candidate in the general election. The same part of the E&J states, in part, that the 40% depreciation applies to capital assets received by a ***primary committee*** prior to the candidate's DOI and subsequently sold to the general campaign committee ***or to another entity***. (Emphasis added.) This wording clearly indicates that assets sold by any primary committee regardless of the purchaser are covered by the regulatory provision.

As originally filed, the Primary Committee's Net Outstanding Campaign Obligations Statement included a telephone system as a capital asset. The Primary Committee now contends that this classification was incorrect. It contends that the acquisition of the phone system should be characterized as a lease and not a purchase of an asset. The Primary Committee argues that the appropriate test of the lease versus purchase classification is a burden of ownership test and that the Commission should look to various court decisions and the IRS in determining the classification of the asset. The Primary Committee cited seven court cases which it believes supports its argument the original classification was incorrect.

The question at issue is whether the transaction is a lease or a conditional sale. The Audit staff reviewed the court cases cited by the Primary Committee and does not believe that they deal with the issue at hand.[3] All of the documentation obtained by the Audit staff indicated that the intent of both parties was a sale with a potential buyback of the asset. The Primary Committee provided a unsigned draft of a letter dated April 28, 1995 that notes the 25% buy back and a maintenance agreement offered by AT&T. In a signed letter from AT&T referencing the "AT&T Definity Equipment Bill", the buy back and the maintenance agreement are never mentioned. Documentation dated March 29, 1995 from AT&T offers the same equipment in a "Master Equipment Lease Agreement Schedule." However, on July 1, 1995 the Primary Committee paid AT&T $190,330 as noted on the check, "pay for phone

[3] Some of the cases cited pertained to sales and/or leases involving livestock, building construction, real-estate, a motion picture and aircraft.

system," rather than choosing to lease. Thus, all documentation available indicates a sale rather than a lease. Further, it should be noted that the Primary Committee originally classified the phone system on its NOCO as an asset.

When discussing its computer systems, the Primary Committee argues that the interpretation of the term capital assets is too inclusive. It feels that only components of a computer system that cannot function alone should be grouped when defining an asset. The Primary Committee believes that the current interpretation forces committees to include every individual component that might be identified as part of a network when applying the 40% depreciation standard. The Primary Committee concludes that the value of their capital assets are overstated by $29,627 as a result.

Prior to the 1996 election the Commission clarified how groups of components are viewed when valuing committee capital assets. The Audit staff feels the revised procedure provides a more realistic picture of the assets available to the campaign.

The Primary Committee addresses the use of a mandatory depreciation of 40% when valuing their capital assets. It argues that the resulting 60% of cost valuation, overstates the actual value of its assets and understates its NOCO, which in turn prohibits a candidate from receiving or retaining matching funds to which he should be entitled. The Primary Committee further maintains that the capital assets of most campaigns are comprised chiefly of computer hardware and software, and that it is a fact of commercial life that no knowledgeable, arms-length buyer will pay near 60% of the cost of those assets. The Primary Committee contends that, the only primary committee able to realize 60% on such assets is that of the eventual nominee, and then only because the primary committee is able to transfer its assets to a successor committee that will not bargain for a fair market price for the assets. According to the Primary Committee this has a detrimental effect on a committee attempting to wind down and pay expenses in a business world that values the assets of the committee at substantially less than the carrying value imposed by the Commission. In order to recoup the valuation of the capital assets the Primary Committee feels this regulation encourages unsuccessful primary committees to sell their assets to friendly parties who would be willing to pay amounts higher than the fair market value or to use less cost effective lease arrangements to satisfy their equipment needs.

The Audit staff agrees that most primary committees who do not gain the nomination are unable to realize 60% of the cost of their assets. However, the current regulations at 11 CFR §9034.5(c)(1) require a committee to include its capital assets on the NOCO at 60% of cost as a partial offset to this valuation. Assets that are not classified as capital assets are not valued.

However, an Exit Conference Memorandum response filed in an unrelated audit points out that the effective date of the current regulation was subsequent to the purchase of many of its capital assets. It is argued that only assets acquired after

that date, August 16, 1995, are subject to the 40% depreciation scale. Assets acquired prior to August 16, 1995 should be considered under the previous regulation which allowed committees to demonstrate a higher depreciation percentage. The Audit staff agrees. All of the Primary Committee's capital assets were acquired prior to August 16, 1995. When the capital assets of the Primary Committee are revalued under the previous regulation, the value is decreased from $266,164 to $85,653.

The NOCO statement which follows uses the revised capital assets valuation and has been updated to reflect the Primary Committee's financial activity through January 31, 1997.

ALEXANDER FOR PRESIDENT, INC.

STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS

as of March 6, 1996

as determined January 31, 1997

ASSETS

Cash in Bank	$966,363 (a)	
Cash on Hand	137	
Accounts Receivable	350,185	
Capital Assets	85,653	
Total Assets		$1,402,338

OBLIGATIONS

Accounts Payable for Qualified Campaign Expenses	$979,675 (b)	
Loan Payable	1,205,000	
Amount Payable to U.S. Treasury Stale-dated Checks	36,966	
Actual Winding Down Costs March 7, 1996 - January 31, 1997	950,427	
Estimated Winding Down Costs February 1, 1997 - June 30, 1997	194,090 (c)	
Total Obligations		3,366,158
Net Outstanding Campaign Obligations as of March 6, 1996 (Deficit)		($1,963,820)

FOOTNOTES TO NOCO

(a) Outstanding checks issued prior to the date of ineligibility and determined to be stale-dated have been added back to the Cash In Bank figure.

(b) The expenditures addressed in Finding III.B.1., Apparent Non-Qualified Campaign Expenses, were paid after the date of ineligibility. Therefore they have been excluded from Accounts Payable for Qualified Campaign Expenses.

(c) Some estimates were used in determining this amount. This estimate is subject to change. Committee records and disclosure reports will be reviewed and changes made as necessary.

3. Matching Funds Received in Excess of Entitlement

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations.

Section 9038.2(b)(1) of Title 11 of the Code of Federal Regulations states, in part, the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR §9034.5.

Based on the Audit staff's analysis of the Primary Committee's NOCO statement, the Candidate had net outstanding campaign obligations on March 6, 1996 of $1,963,820. That deficit was liquidated as follows:

Net Outstanding Campaign Obligations (Deficit) as of 3/6/96		($1,963,820)
Plus:		
Net Private Contributions Deposited 3/7/96 - 4/15/96	219,967	
Matching Fund Payment 3/15/96	565,242	785,209
Remaining Entitlement at 4/15/96		($1,178,611)
Plus:		
Matching Fund Payment 4/15/96		1,281,673
Amount received in excess of entitlement at 4/15/96		103,062
Plus:		
Matching Fund Payments received 5/1/96 - 6/3/96		732,276
Total in Excess of Entitlement		$835,338[4]

[4] The amount in excess of entitlement in the Exit Conference Memorandum was $812,799. The principal differences in the analysis are the reduction of both capital assets and estimated winding down costs.

The principal cause of the Primary Committee's receipt of matching funds in excess of the Candidate's entitlement was an overstatement of winding down costs on the NOCO Statements filed with the matching fund submissions - in particular estimated Legal and Accounting Expenses. Based on an analysis of the issues identified during the audit, and after discussions with the Primary Committee, the Legal and Accounting Expense was reduced substantially, causing a corresponding reduction in the Candidate's matching fund entitlement. The current estimated winding down cost are less than both that originally provided by the Primary Committee and the amount contained in the Exit Conference Memorandum.

In addition to the excessive matching fund payments calculated above, the Primary Committee's last matching fund payment was reduced. The Primary Committee had requested $71,796 but, had included an adjustment of $99,242 as a liability on its NOCO statement to adjust the value of its assets from 60% of cost to what it believed to be fair market value. The adjustment was disallowed by the Commission at that time based on 11 CFR § 9034.5(c)(1). Therefore, instead of the total remaining obligations of $126,418 calculated by the Primary Committee, the recalculated NOCO statement reflected a remaining entitlement of $27,176 ($126,418-$99,242) and that amount was paid. Although a reduced value of its capital assets has been accepted, the Primary Committee still would not have been entitled to the matching funds based on the overstatement of estimated winding down expenses.

Recommendation #2

The Audit staff recommends that the Commission determine that the Primary Committee is required to repay $835,338 to the U.S. Treasury pursuant 11 CFR §9038.2(b)(1). The Primary Committee made a repayment of $631,977 to the U.S. Treasury on February 4, 1997 and thus $203,361 is still owed.

4. Stale-Dated Checks

Section 9038.6 of Title 11 of the Code of Federal Regulations states, in part, that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission of its efforts to locate the payees, if such efforts are necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff reviewed the Primary Committee's bank activity through September 1996. From this review, 62 checks, totaling $37,966, were identified that had not been negotiated. Of these, 49 checks totaling $34,575 were for contribution

refunds. At a conference held at the end of fieldwork, Primary Committee representatives were provided with schedules of the stale-dated checks. On January 29, 1997 a contribution refund check for $1,000 which was included above cleared the bank. Thus, $36,966 is the remaining amount of stale-dated checks.

Recommendation # 3

The Audit staff recommends that the Commission determine that stale-dated checks, totaling $36,966 are payable to the United States Treasury. On November 15, 1996, the Primary Committee submitted a check payable to the U.S. Treasury in the amount of $37,966 for stale-dated checks. The excess payment of $1,000 will be deducted from the total amount due the U.S. Treasury at section VI..

IV. ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE, INC.

A. FINDING AND RECOMMENDATION - AMOUNT DUE THE U.S. TREASURY - STALE-DATED CHECKS

Section 9007.6 of Title 11 of the Code of Federal Regulations states, in part, that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission of its efforts to locate the payees, if such efforts are necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff reviewed the Compliance Committee's bank activity through January 31, 1997. The review identified 19 checks, totaling $12,200, issued by the Compliance Committee which had not been negotiated. All of these checks were to refund contributions.

At a conference held at the end of fieldwork, Compliance Committee representatives were provided with schedules of the stale-dated checks. A Compliance Committee representative stated the Audit staff would be provided with documentation to resolve several items. On December 16, 1996, one of these checks in the amount of $1,000 cleared the bank. Thus, the total of the remaining stale-dated checks is $11,200.

Recommendation # 4

The Audit staff recommends that the Commission determine that stale-dated checks, totaling $11,200 are payable to the United States Treasury. On December 11, 1996 the Compliance Committee submitted a check payable to the U.S. Treasury in the amount of $12,200 for the remaining outstanding checks. The excess payment of $1,000 will be deducted from the total amount due the U.S. Treasury at section VI. of this report.

V. ALEXANDER AUDIT FUND, INC. (FINES COMMITTEE)

The Audit staff did not detect any material non-compliance during the audit of the Fines Committee.

If residual monies exist in the Fines Committee after payment of any fines and civil penalties assessed pursuant to the Federal Election Campaign Act, the Alexander Audit Fund, Inc. must take the following action with respect to such monies:

- Return any residual monies to contributors on either a pro-rata basis or first-in, first-out basis;
- disgorge any residual monies to the United States Treasury;
- contribute any residual monies to any organization described in section 170(c) of Title 26 of the United States Code; or
- transfer any residual monies to any national, state, or local committee of any political party so long as such monies are not used in connection with any Federal election.

VI. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY

A. PRIMARY COMMITTEE:

Finding III.B.1.	Apparent Non-Qualified Campaign Expenses: Compliance Committee Expenses Paid by the Primary Committee	$1,469
Finding III.B.3.	Matching Funds Received in Excess of Entitlement	$835,338*
Finding III.B.4.	Stale-Dated Checks	$36,966*

B. COMPLIANCE COMMITTEE

Finding IV.A.	Stale-Dated Checks	$11,200*
Total for both Committees		$884,973
Paid to Date		$682,143
Total Still Due		$202,830

* A portion or all of the amount has been paid.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 28, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman KBC
Associate General Counsel

Lorenzo Holloway L.H.
Assistant General Counsel

Craig D. Reffner CDR
Attorney

SUBJECT: Proposed Audit Report for Alexander for President, Inc., Alexander for President Compliance Committee, Inc., and Alexander Audit Fund, Inc.
(LRA #469)

The Office of General Counsel has reviewed the proposed Audit Report (the "Report") on Alexander for President, Inc. (the "Primary Committee"), Alexander for President Compliance Committee, Inc. (the "Compliance Committee"), and Alexander Audit Fund, Inc. (the "Audit Fund"), which was submitted to this Office on April 1, 1997. The following memorandum summarizes our comments on the proposed Report.[1] We concur with findings in the proposed report which are not discussed separately in the

[1] Since this document concerns the audit of a publicly-financed presidential candidate, we recommend that the Commission consider this document in open session. *See* 11 C.F.R. § 9038.1(e).

following memorandum. If you have any questions concerning our comments, please contact Craig D. Reffner, the attorney assigned to this audit.

I. Apparent Non-Qualified Campaign Expenses - Compliance Committee Expenses Paid by the Primary Committee (III.B.1.)

The candidate established the Compliance Committee for his general election campaign on February 15, 1995. The proposed Report identifies two expenditures totaling $6,535 that the Primary Committee made on behalf of the Compliance Committee. The first expenditure, for $1,000, was made to Agnes Warfield, who contracted with the Compliance Committee to raise funds. The second expenditure for $5,535, was made to ACS, Inc., a vendor that processed and reported contributions for the Primary, Compliance and Fines Committees.[2] The proposed Report concludes that the expenditures in question are non-qualified campaign expenditures and recommends that the Primary Committee make a pro-rata repayment of $1,469 to the United States Treasury.

The Primary Committee does not dispute that the expenditures in question were made on behalf of the Compliance Committee. Rather, the Primary Committee maintains that because the contributions made to the Compliance Committee had to be refunded pursuant to Section 102.9(e) of the Commission's regulations, the Primary Committee paid the expenses in question so that the creditors of the Compliance Committee would be paid. According to the Primary Committee, this "'inconsistency forces an unsuccessful candidate who prudently chooses to establish a repository for redesignated contributions [i.e., a GELAC] to choose between paying his [GELAC] debts or making non-qualified expenditures.'" Proposed Report at 8.

This Office concurs with the recommendation for repayment in the proposed Report. When a primary committee makes expenditures to raise funds for a GELAC and process contributions made to a GELAC, such expenditures are not made in connection with the candidate's campaign to seeking his or her party's nomination. 11 C.F.R. § 9032.9. Rather, such expenditures are related to the candidate's compliance activities for a potential general election campaign. Thus, such expenditures are not qualified campaign expenses for the primary election.[3] *See* Joint Memorandum to the Commission

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[2] Although ACS, Inc., actually invoiced the Primary Committee a total of $148,673 for the processing and handling of contributions, the $5,535 payment at issue here reflects that portion of the total invoice that relates to the processing and collecting of contributions made to the Compliance Committee.

[3] The expenses incurred by a primary committee to redesignate excessive contributions to a GELAC, however, would be qualified campaign expenses. Since a primary committee that receives an excessive contribution must either refund the contribution or attempt to reattribute or redesignate the excessive portion of the contribution, 11 C.F.R. §§ 110.1 and 110.2, any costs incurred in ensuring that

From the Audit Division and the Office of the General Counsel -- GELAC and Fines and Penalty Accounts Established by the 1996 Presidential Candidates, dated October 16, 1996, at 1-5. In addition, the Compliance Committee's expenses could have been paid with any surplus primary committee monies that existed after all presidential primary committee repayment obligations were made, the personal funds of the presidential primary candidate or any remaining residual funds from the candidate committee that was authorized for a different election cycle. *See id.* at 5. *See also* AO 1988-5 *and* Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing at 15.[4]

II. Determination of Net Outstanding Campaign Obligations (III.B.2.)

The proposed Report recommends that the Commission make a determination that the Committee repay $835,338 to the United States Treasury for receiving funds in excess of its entitlement. This repayment is based, in part, upon the valuation of the Primary Committee's telephone system and computer equipment as capital assets in the Statement of Net Outstanding Campaign Obligations ("NOCO Statement"). The telephone system was acquired by the Primary Committee in July 1995 at a cost of $190,330.14, including sales tax. The proposed Report provides for a fair market value of the telephone system of $31,400.00. The computer system, including all the hardware, software and wiring, was acquired between December 1994 and July 1995 for $233,045.78. The proposed Report provides for a fair market value of $54,253 for this capital asset.[5]

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contributions fall within the limitations of the Act would be expenditures made in connection with the candidate's campaign for nomination. 11 C.F.R. § 9032.9.

[4] Although the Compliance Manual was not approved until January 1996, a point in time well after the Compliance Committee was established, it appears that at least some of the Compliance Committee expenses that are at issue here may have been incurred after January 1996. In the case of Agnes Warfield, the available information shows that the Compliance Committee entered into an agreement with this vendor on February 1, 1996 for fundraising services. The Compliance Committee paid Agnes Warfield on April 15, 1996. In the case of ACS, it is unclear exactly when the costs for processing contributions to the Compliance Committee were incurred. However, ACS did not invoice the Compliance Committee until May 1, 1996. Assuming that the costs related to ACS's services were incurred during the time that Agnes Warfield was fundraising on behalf of the Compliance Committee, then the costs in question were apparently incurred after January 1996.

[5] It should be noted that Primary Committee has argued that the telephone system and a portion of the computer equipment at issue here are not capital assets. The Primary Committee contends that the telephone system was not purchased, but rather was leased while some of the computer equipment actually constituted separate components, rather than pieces of the entire computer system, that each cost less than $2,000 when purchased. The determination of whether items acquired by a primary committee are capital assets is factually specific to each campaign and the available information here shows that the telephone system and computer equipment acquired by the Primary Committee appear to be capital assets. While it is true that leased equipment is not a capital asset, the Primary Committee paid sales tax for the telephone system at the time that it acquired this item. In addition, the Primary Committee sold the telephone system

Currently, the depreciation formula for capital assets under the Commission's regulations provides that the fair market value of a capital asset is the total original cost of the item when acquired, less 40% for depreciation. 11 C.F.R. § 9034.5(c). Prior to its revision in 1995, Section 9034.5(c) provided candidates with the opportunity to claim a higher depreciation than 40%. 11 C.F.R. § 9034.5(c) (1987). In doing so, the candidate was required to demonstrate, through documentation, that the fair market value of the item was less. 11 C.F.R. § 9034.5(c) (1987). *Compare* 11 C.F.R. § 9034.5 (1987) *with* 11 C.F.R. § 9034.5(c) (1995). In revising Section 9034.5, the Commission explained that it was no longer going to allow committees to demonstrate that a capital asset had depreciated greater than the standard 40% ratio because "there was no corresponding provision for the Commission to document a higher fair market value." 60 Fed. Reg. 116, 31864, 31868 (June 16, 1995) and 60 Fed. Reg. 116, 57537, 57541 (November 16, 1995).

During the audit fieldwork, the Audit Division initially calculated the fair market value of the assets in question at 60% of their original cost, as required by 11 C.F.R. § 9034.5(c) (1995). This resulted in a fair market value of $114,198.08 for the telephone system and $139,827.47 for the computer system. However, during the audit of another publicly funded Presidential candidate in the 1996 election, it was argued that because this depreciation formula was not effective until August 16, 1995, it should not be applied to capital assets acquired before that date. 60 *Fed. Reg.* 57537 (Nov. 16, 1995). Although the Primary Committee did not challenge the retroactive application of Section 9034.5(c) (1995), the Audit Division, for purposes of consistency, applied Section 9034.5(c) (1987) when assessing the value of all capital assets acquired before August 16, 1995. This resulted in the fair market value calculations for the items in question as they are currently stated in the proposed Report.[6]

Although the Primary Committee has not challenged the retroactive application of Section 9034.5(c)(1) (1995), this Office believes that the capital assets at issue here should be valued under Section 9034.5(c)(1) (1987) because that was the regulation that was in effect at the time that these assets were acquired. The Supreme Court has recognized that "[r]etroactivity is not favored in the law," *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988), and noted that "an administrative agency may not apply a new rule retroactively when to do so would unduly intrude upon

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after the campaign. Had the telephone system been leased, the Primary Committee would have neither paid sales tax for it nor would the Primary Committee have been able to sell this item after the campaign. In the case of the computer system, the Primary Committee neither identified those items which are purportedly separate components of the system, nor did it demonstrate that any pieces of the computer equipment were in fact purchased and used separately. Thus, it appears that the computer equipment included numerous parts of an entire system.

[6] The Audit Division calculates the fair market value of assets acquired after that date under current Section 9034.5(c) (1995).

reasonable reliance interests." *Heckler v. Community Health Services*, 467 U.S. 51, 60 n. 12 (1984). In this case, there is an issue of whether the Primary Committee relied on Section 9034.5(c)(1) (1987) at the time of purchase or at the time when it was required to calculate the value of the capital assets for the purpose of the NOCO Statement. Both versions of the regulations require the Primary Committee to value its capital assets based on a percentage of the original cost. *Compare* 11 C.F.R. § 9034.5(c)(1) (1987) *with* 11 C.F.R. § 9034.5(c)(1) (1995). Since the Primary Committee's subsequent valuation is linked to the original cost of the capital asset, the Primary Committee's reliance interest in terms of depreciating the capital asset would occur at the time of purchase. For example, if the Primary Committee had notice that it would not be able to claim depreciation that is greater than 40% of the original cost under the current regulations, 11 C.F.R. § 9034.5(c)(1) (1995), it may have chosen not to purchase the capital assets or it may have chosen to purchase other capital assets. However, the current regulations were not in effect at the time of the purchase. Therefore, the Office of General Counsel believes that the fair market value of the telephone system and computer equipment in question should be calculated under Section 9034.5(c) (1987).[7]

In the case of the telephone system, the proposed Report shows that the fair market value for this item is $31,400. This reflects a depreciation level of 84% from the original purchase price of $190,330.14 for the entire system. This Office understands that this assessment of fair market value reflects the amount that AT&T, the vendor who sold the system, paid the Primary Committee to buy back select portions of the telephone

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[7] We note that the Primary Committee did raise two arguments about the applicability of Section 9034.5(c) (1995). First, the Primary Committee argued that Section 9034.5(c) (1995) does not apply to unsuccessful presidential candidates, but rather instead only applies to primary candidates who transfer their assets to their general election campaign. Second, the Primary Committee argues that the 40% depreciation formula in Section 9034.5(c) (1995) fails to accurately account for the fair market value of a committee's capital assets, especially computer equipment, which the Primary Committee maintains has a resale value that is substantially less than its initial cost.

If Section 9034.5(c) (1995) is not applied in this matter,these arguments are moot. However, it should be noted that the Commission previously rejected these arguments when it determined to withhold matching funds that the Primary Committee requested after the candidate's date of ineligibility. *See* Statement of Reasons in support of Final Determination -- Alexander for President Committee, Inc., May 1, 1996 Request for Additional Matching Funds, dated August 7, 1996. The basis for the Commission's determination concerned the NOCO Statement that the Primary Committee submitted showing that the fair market value of the items in question was $137,295, which was less than 60% of their original cost. In addressing the Primary Committee's arguments about the applicability of Section 9034.5(c) to candidates who do not participate in the general election, the Commission's Statement of Reason, noting that Section 9034.5(c) clearly applies to all presidential primary candidates who receive public funds under the Presidential Primary Matching Payment Account Act, explained that the 40% depreciation formula provided for under Section 9034.5(c) (1995) does reflect varying depreciation rates for capital assets. *Id.* at 4 (*citing* 60 *Fed. Reg.* 116, 31854, 31868 (Nov. 16, 1995).

system after the campaign concluded. Documents provided by the Primary Committee during the audit fieldwork show that AT&T agreed, as a term of the sale, to buy back the telephone system from the Primary Committee at 25% of the original cost.

In justifying the higher level of depreciation for this item, the Primary Committee staff explained during the audit field work that AT&T's standard arrangement for buying back telephone systems was to pay 25% of the initial cost for select items of the system that could be resold or leased by AT&T. The $64,730.14 in equipment that AT&T did not buy from the Primary Committee included such items as wires and cables which the Primary Committee claims had fully depreciated. As the Primary Committee staff explained, not only was this the type of equipment that AT&T declined to buy back because it was unsalable, but, without the entire telephone system in place, the equipment in question was useless.

This Office believes that there is sufficient information demonstrating the higher level of depreciation for the telephone system. As an initial matter, it should be noted that the amount paid for a primary committee's assets is not necessarily equal to the depreciated value. *See* 52 Fed. Reg. 80264, 20870 (June 3, 1987). However, in the case of the telephone system at issue here, AT&T apparently regularly agreed to buy back select portions of the telephone systems it sold at 25% of the original cost. For example, the Audit Division and the Office of General Counsel have confirmed that other 1996 Presidential primary candidates purchased similar telephone systems from AT&T under arrangements that provided for AT&T to buy select items of the telephone system back after the campaign at 25% of the original cost. Given that AT&T has consistently agreed to the same terms for buying back used telephone systems, the resale price of $31,400 that is at issue here may be reflective of the depreciated value of the Primary Committee's entire telephone system, including those items that AT&T did not repurchase because they were either obsolete or had fully depreciated. Although it is unclear if the Committee could have obtained more than $31,400 by selling the telephone system to another buyer, the agreed upon terms for AT&T to repurchase the system may reflect the fact that the telephone system depreciated more than 40% of its original cost.

In the case of the computer equipment, the proposed Report shows that the fair market value for this capital asset is $54,253. This reflects a depreciation of 76% of the original purchase price of $233,045.78. This Office understands that the fair market value of this item was based upon the total sales price that the Primary Committee was able to obtain for the various items of computer equipment that were sold after the candidate ceased his campaign. In justifying this higher level of depreciation, the Primary Committee asserted that unlike other capital assets, computer equipment becomes obsolete quickly and as such, is subject to a higher rate of depreciation than 40% of the original purchase price.

Although computer equipment may be subject to depreciation higher than 40%, we again note that the amount paid for a primary committee's assets may not necessarily be equal to the depreciated value of the asset. In a transaction where the purchase price is used to justify a depreciation that is greater than 40% of the original cost, a committee could sell its assets for less than the assets' depreciated value and, in turn, realize a benefit for itself by increasing the deficit as reflected in the NOCO Statement and, in turn, inflating its entitlement to public funds. *See* 11 C.F.R. §§ 9034.1(b) and 9034.5(b). *See also*, 52 Fed. Reg. 80264, 20870 (June 3, 1987) (establishing higher depreciation than 40% may be demonstrated by submitting an *independent appraisal* of the item's value) (emphasis added). In the matter at hand, however, the available information shows that the Primary Committee apparently sold its computer equipment to independent third parties. Moreover, although the Office of General Counsel was unable to establish a value for the computer equipment at the time that the NOCO Statement was submitted, we were able to confirm from publicly available sources that the sales prices for some of the computer equipment are comparable to current sales prices for similar used equipment. Accordingly, it appears that the Primary Committee's computer equipment is subject to a higher depreciation level than 40% of the original cost.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1997

Mr. Todd Eardensohn, Treasurer
Alexander for President, Inc.,
Alexander for President Compliance Committee, Inc.,
Alexander Audit Fund, Inc.
512 North Washington Street
Alexandria, VA 22314

Dear Mr. Eardensohn:

Attached please find the Audit Report on Alexander for President, Inc., Alexander for President Compliance Committee, Inc., and Alexander Audit Fund, Inc.. The Commission approved the report on June 19, 1997. As noted on page 4, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of $884,973 is required within 90 calendar days after service of this report (October 2,1997). The audit report also notes that $682,143 has been paid, leaving a balance of $202,830.

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (August 4, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 30 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 30 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on July 8, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Joe Swearingen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

For Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1997

Governor Lamar Alexander
1114 17th Avenue S., Suite 103
Nashville, TN 37212

Dear Governor Alexander:

Attached please find the Audit Report on Alexander for President, Inc., Alexander for President Compliance Fund, Inc., and Alexander Audit Fund, Inc.. The Commission approved the report on June 19, 1997. As noted on page 4, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(c)(1) and (d)(1), the Commission has made a determination that you are required to repay to the Secretary of the Treasury $884,973 within 90 calendar days after service of this report (October 2,1997). The audit report also notes that $682,143 has been paid, leaving a balance of $202,830.

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (August 4, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 30 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if you so elect. If you decide to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If you do not dispute this determination within the 30 day period provided, it will be considered final.

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Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Joe Swearingen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

H7Halter J.

For Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

ALEXANDER FOR PRESIDENT, INC.
ALEXANDER FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
AND
ALEXANDER AUDIT FUND, INC.

Audit Fieldwork	6/10/96 — 10/10/96
Exit Conference Memorandum to the Committee	11/21/96
Response Received to the Exit Conference Memorandum	2/4/97
Audit Report Approved	6/19/97

FEC
DOCUMENT
SEPARATOR