



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20543

February 16, 1979

MEMORANDUM

TO: FRED S. EILAND  
PRESS OFFICE

THROUGH: *Pl* BOB COSTA

FROM: JUDY HAWKINS *J*

SUBJECT: PUBLIC ISSUANCE OF AUDIT REPORT -  
LOWENSTEIN '76 COMMITTEE (NY/5)

Attached please find a copy of the final audit report for the Lowenstein '76 Committee (NY/5) which was approved by the Commission on January 31, 1979.

As of this date, February 16, 1979, all informational copies of the report have been received by all parties involved and this report may be released to the public. The release of this report will complete the 5th District of New York.

Attachment as stated

cc: FEC Library  
RAD  
Public Record





## FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20463

### REPORT OF THE AUDIT DIVISION ON THE LOWENSTEIN '76 COMMITTEE

#### I. Background

##### A. Overview

This report is based on an audit of the Lowenstein '76 Committee ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy 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 Title 2 of the United States Code which directs the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The Committee registered with the Federal Election Commission on July 12, 1976, in support of Allard K. Lowenstein for the office of Representative of the Fifth Congressional District of New York. On July 12, 1976, the Committee was designated by the Candidate as his principal campaign committee for the 1976 election. The Committee maintained its headquarters in Rockville Centre, New York.

The audit covered the period from July 1, 1976 through September 30, 1977, the final coverage date of the latest report filed by the Committee at the time of the audit. During this period the Committee reported a beginning cash balance of \$ -0-, total receipts of \$112,442, total expenditures of \$112,302 and a closing cash balance on June 30, 1977 of \$140.

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



B. Key Personnel

The principal officers of the Committee were Mr. Paul Tully, Chairman, and Mr. Charles Castelli, Treasurer.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Auditor's Opinion and Description of Findings

It is the opinion of the Audit staff, based upon examination of the reports and statements filed and the records presented, that, except for the deficiencies noted below, the reports and statements of the Lowenstein '76 Committee fairly present the financial activities of the Committee for the period covered by the audit. Further, except as noted below, no material problems in complying with the Federal Election Campaign Act were discovered during the course of the audit.

A. Apparent Corporate and Labor Union Contributions

Section 441b(a) of Title 2, United States Code, states that it is unlawful for any political committee knowingly to accept or receive any contribution from any corporation or labor organization.

Section 103.3(b) of Title 11, Code of Federal Regulations, requires that contributions which appear to be illegal shall be, within 10 days (1) returned to the contributor; or (2) deposited into the campaign depository, and reported, in which case the treasurer shall make and retain a written record noting the basis for the appearance of illegality. The treasurer shall make his or her best efforts to determine the legality of the contribution. Refunds shall be made when a contribution cannot be determined to be legal within a reasonable time, and the treasurer shall so note by amending the current report or noting the change on the candidate's or committee's next required report.

Our examination of the Committee's contribution records revealed that the Committee received eight (8) contributions from eight (8) corporations totaling \$1,290 and one (1) contribution from a labor union totaling \$100. Two (2) of the contributions, totaling \$1,000, were each in excess of \$100. There were no procedures in use by the Committee to determine if companies or businesses, which sent contributions drawn on their accounts, were incorporated. The Audit staff verified the corporate status of the businesses through inquiries with the appropriate Secretary of State.

We discussed the retention of apparent corporate and labor union contributions with the Controller and he could offer no explanation regarding this matter. He stated that he was unaware that the Committee had accepted corporate or labor union contributions other than a few known to be from "one-person" corporations. He stated the Committee would be more careful in the future and agreed to return all corporate and labor union contributions "provided the Committee's cash flow permitted."

On May 8, 1978, the Audit staff received copies of seven (7) certified Committee checks totaling \$1,190. The seven (7) checks were used to refund seven (7) of the nine (9) contributions. The Audit staff also received copies of two (2) letters from the two (2) remaining contributors indicating that their contributions did not contain corporate or labor union treasury funds.

The Audit staff referred this matter to the Commission's Office of General Counsel on May 16, 1978, where Matter Under Review 611(78) was initiated.

Based on its review, the Office of General Counsel recommended that since all corporate and labor union contributions were refunded, no further action should be taken. On October 2, 1978, the Commission voted to find no reasonable cause to believe that Section 441b(a) had been violated and to take no further action in this matter.

B. Disclosure of "Payments on Behalf of the Committee"

Section 431(e)(1)(A) of Title 2, United States Code, states in part that a contribution means a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the election of any person to Federal office.

Section 434(b) (5) of Title 2, United States Code, states that each report shall disclose each loan to or from any person within the calendar year in an aggregate amount or value in excess of \$100 together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endorsers, and guarantors, if any, the date and amount of such loans.

Section 434(b) (9) of Title 2, United States Code, requires the Committee to disclose the identification of each person to whom expenditures have been made on behalf of the Committee within the calendar year in an aggregate amount or value in excess of \$100, the amount, date, and purpose of each such expenditure.

Section 441a(a) (1) (A) of Title 2, United States Code, states that no person shall make contributions to any candidate and his authorized political committee(s) with respect to any election for Federal office which in the aggregate exceed \$1,000.

Section 441a(f) of Title 2, United States Code, states that no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of Section 441a.

1. One (1) individual made three (3) payments totaling \$2,683 on behalf of the Committee as an advance of rental and catering expenses for a fundraiser held on July 13, 1976.

The amounts and dates of these payments were:

July 9, 1976	\$1,550
July 12, 1976	1,065
July 19, 1976	<u>68</u>
Total	<u>\$2,683</u>

During discussions with the Committee, it was learned that the hotel where the fundraiser was to be held required advance payment of the expenses and that the Committee did not have sufficient funds available to make these payments. Therefore, this individual, a friend and supporter of the Candidate, made the required payments, and the Committee agreed to repay these amounts advanced with the proceeds from the fundraiser.

On August 5, 1976, the Committee repaid the \$2,683 in three (3) checks in the same amounts as the original payments. 1/ The Committee reported the payment of this amount as a reimbursement on September 30, 1976. However, due to its treatment of the transactions as reimbursements, the Committee did not report the payments on its behalf as receipts or expenditures.

2. On September 21, 1976, the Committee Controller made a \$2,000 payment to a vendor on behalf of the Committee from his personal funds. On the same day, the Committee issued its check for the same amount to reimburse the Controller for this payment. This reimbursement check to the Controller was not negotiated until October 7, 1976, 16 days after the date it was drawn. During most of this period, the Committee did not have sufficient funds in its depository to honor the check. 2/ The Committee reported this transaction as a reimbursement to the Controller on September 21, 1976. However, due to its treatment of this payment as a reimbursement, the Committee did not report the payment on behalf of the Committee as a receipt or expenditure.

During discussions with the Controller as to the circumstances surrounding the payment to the vendor, he stated that the vendor would not accept a Committee check but would accept his personal check since he had previous business dealings with the vendor. He stated that the Committee issued to him a check for \$2,000 and that he then made the payment with his personal check. He characterized this transaction as a "favor" to the Committee so that service from the vendor would not be interrupted. He stated that the delay in negotiating the Committee check was due to an oversight by his secretary, who neglected to deposit the check in his account. Upon his discovery of this, he immediately deposited the check himself.

3. In June, 1977, four (4) individuals made loans of \$1,000 each on behalf of the Lowenstein '76 Committee and the Lowenstein '74 Committee, to a promoter which represented an advance to be used for expenses in connection with a fundraising concert to be held on August 4, 1977.

---

1/ The checks were paid by the Committee's bank on September 14 and 15, 1976.

2/ On October 1, 1976, the Committee deposited sufficient funds to be able to honor the \$2,000 check.

On August 12, 1977, the promoter repaid the loans to each individual. The Committee did not report these transactions on its reports. During discussions with the Committee, it was revealed that while this money was advanced for expenses pertinent to the fundraiser, it actually was never used by the promoter, therefore the Committee did not consider these reportable transactions.

We informed the Committee that, in our opinion, based on the facts related to us and examination of the documentation in the aforementioned three (3) situations, these payments on behalf of the Committee constituted loans, and as such represented reportable contributions during the time they were outstanding. We further advised the Committee of the limitation on individual contributions addressed in Section 441a(a)(1)(A) of the Act and noted that the transactions mentioned in (1) and (2) above were in excess of the \$1,000 per election limitation.

On May 5, 1978, the Committee filed amendments which included the necessary disclosure for items (1), (2), and (3) above in response to our request of March 30, 1978.

Because item (3) above involved only disclosure irregularities, the amendment filed by the Committee was sufficient and no further action was necessary.

The Audit staff referred items (1) and (2) above to the Office of General Counsel on June 12, 1978, for its review. On June 21, 1978, these two (2) items were incorporated into Matter Under Review 611 (78).

For item (1) above, the review by the Office of General Counsel resulted in a conciliation agreement, signed by the Committee Controller on October 25, 1978. In consonance with the conciliation agreement, the Committee paid a civil penalty of \$200 for violating Section 441a(f) of the Act. On November 21, 1978, the Commission voted to accept the conciliation agreement and to close the matter.

For item (2) above, since the Committee disclosed the transaction as a loan to the Committee and as an expenditure to the vendor, and promptly reimbursed the Controller for funds expended on its behalf, the Commission voted on October 2, 1978, to find no reasonable cause to believe that the Committee violated 2 U.S.C. 441a(f) by accepting a payment on its behalf by the Committee's Controller. Therefore, no further action was taken.

C. Itemization of Expenditures

Section 434(b)(9) and (10) of Title 2, United States Code, requires that a committee disclose the identity of each person to whom expenditures have been made which aggregate in excess of \$100 within a calendar year, together with the amount, date, and purpose of each expenditure.

Our examination of Committee expenditure records revealed that 86 expenditures (15.25% of all itemizable expenditures) aggregating in excess of \$100 were not itemized as required. These expenditures represent a total amount of \$3,315.43 (3.60% of all itemizable expenditures), of which \$2,640.84 was paid to campaign employees for personal services and \$674.59 was paid to various vendors and other individuals.

The Audit staff was informed that the Committee misunderstood the itemization requirements of the Act, and thus did not itemize the above mentioned expenditures.

On May 5, 1978, the Committee filed a comprehensive amendment which included the itemization for the expenditures not previously itemized.

Recommendation

Since the Committee filed the comprehensive amendment, the Audit staff recommends no further action.

D. Other Matters

Described below are matters noted during the audit for which the Audit staff believes no further action is required by the Committee.

1. During our examination of the petty cash fund, we were able to determine that \$2,188.09 in various cash receipts, including \$948 from a postage stamp refund, was used in the petty cash fund without first being deposited into the Committee bank account. We advised the Committee of the necessity of depositing all contributions into its account within 10 days of receipt.



The Committee replied that the \$948 was received very close to election day and the funds were needed to pay campaign expenses on election night. The Committee was unable to explain why the balance of these funds was never deposited. The Committee pointed out that these funds were reported on FEC disclosure reports as required.

2. The Committee did not deposit contributor checks totaling \$3,800 within the 10 day period as required by Section 103.3(a) of the Commission's Regulations. The Controller attributed the late deposits to various problems encountered through banking by mail and that delays were occasionally caused by "business travel and pressures of other matters."

3. It was noted during our examination of Committee receipt records that in one (1) instance, a member of the Committee commingled Committee funds with his personal funds as prohibited by Section 432(b) of Title 2, United States Code.

The Controller explained that the commingling occurred when he collected \$221 in cash at a fundraising event. Rather than send cash through the mail to the bank, he wrote a personal check for \$221 and deposited it in the Committee account, keeping the cash in exchange.

CONGRESSIONAL AUDIT REPORT

Candidate/Committee: Allard Lowenstein

State: New York

District: 5th

Location: Long Island - Central and Southwestern Nassau County

Political Party Affiliation: Democrat (Liberal)

Major Opponent(s): John Wydler (R, C)

Other Candidates Audited: John Wydler (R, C)

Votes Cast: General Election - John Wydler (R, C) - 110,366 - 55.7%  
Allard Lowenstein (D, L) - 87,862 - 44.3%

Primary Election - Unopposed

Total Receipts for Period: \$112,442

Total Expenditures for Period: \$112,302

First Elected (if applicable): 1969-71



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20463

ADDITIONAL INFORMATION REGARDING THIS ORGANIZATION  
MAY BE LOCATED IN A COMPLETED COMPLIANCE ACTION  
FILE RELEASED BY THE COMMISSION AND MADE PUBLIC IN  
THE PUBLIC RECORDS OFFICE. FOR THIS PARTICULAR  
ORGANIZATION'S COMPLETED COMPLIANCE ACTION FILE  
SIMPLY ASK FOR THE PRESS SUMMARY OF MUR # 611.  
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF  
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.



