

Original



FEDERAL ELECTION COMMISSION

1125 K STREET NW
WASHINGTON, D.C. 20463

September 18, 1979

MEMORANDUM

TO: FRED EILAND
PRESS OFFICE

THROUGH: BOB COSTA *RC*

FROM: JUDY HAWKINS *JH*

SUBJECT: PUBLIC ISSUANCE OF AUDIT REPORT -
KIRBY FOR CONGRESS COMMITTEE (NC/2)

Attached please find a copy of the final audit report of the Kirby for Congress Committee (NC/2) which was approved by the Commission on August 28, 1979.

As of this date all informational copies of the report have been received by all parties involved and this report may be released to the public. With this release, the North Carolina 2nd District is now complete.

Attachment as stated

cc: FEC Library
RAD
Public Record

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FEDERAL ELECTION COMMISSION

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

REPORT OF THE AUDIT DIVISION ON THE KIRBY FOR CONGRESS COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Kirby for Congress 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 Office of the Clerk of the U.S. House of Representatives on December 19, 1975, in support of James Russell Kirby, candidate for the Office of Representative of the 2nd Congressional District of North Carolina. On April 22, 1976, the Committee was designated by the candidate as his principal campaign committee for the 1976 election. The Committee maintained its headquarters in Wilson, North Carolina.

The audit covered the period from December 19, 1975, the inception date of the Committee, through March 31, 1977, the final coverage date of the last report filed by the Committee at the time of the audit. 1/ During this period the Committee reported a beginning cash balance of \$-0-, total receipts of \$133,100.43, total expenditures of \$133,100.48, and a closing cash balance on March 31, 1977, of \$-0-. 2/

1/ The Committee filed a termination report, in error, as of this date, (see Finding B, below).

2/ The Committee did not file a year-end report for 1976. However, the said report was located in the Committee records during the audit, and receipt and expenditure activity per this report have been included in above totals (see Finding B, below).

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 Carl F. Settle, Chairman, from December 19, 1975, through July 7, 1976; Hugh E. Batts, Chairman, from July 8, 1976, to present; and Charles Peter Allen, 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. Audit's Statement and Description of Findings

It is the opinion of the Audit staff, based upon examination of the records and statements filed and the records presented, that, except for the deficiencies noted below, the reports and statements of the Party for Congress 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. Excessiveness of Excessive Contributions

Section 431(a)(1)(A) of Title 2, United States Code, states that no person shall make contributions to a candidate or his authorized political committee, with respect to any Federal election, which in the aggregate exceed \$1,000. Section 431(e)(1) of Title 2, United States Code, defines a contribution, in part, as a gift of money or a loan of money. Section 431(f) of Title 2, United States Code states, in part, that no candidate or political committee shall knowingly accept any contribution in violation of the contribution limitations. Section 432(a)(1) and (2) of Title

2, United States Code requires, in part, that the treasurer of a political committee keep a detailed and exact record of all contributions, including the identification of every person making a contribution in excess of \$50, and the date and amount thereof, and if a person's contributions aggregate more than \$100, the record shall include occupation and the principal place of business (if any).

Fourteen individuals made loans of \$1,000 to the Committee in June and July of 1976. A review of the Committee contributor records indicated that five (5) of these individuals may each have made other contributions to the Committee prior to June, 1976. The contributions, ranging in amounts from \$10 to \$104, occurred from February through May of 1976. In four (4) of the five (5) cases, incomplete Committee records prevented a determination of whether the individuals making the loans and those making the contributions were the same persons. The Treasurer confirmed the same individual's involvement in one (1) instance, stating that the Committee did not consider the loans as contributions as it expected to raise sufficient funds to repay the loans.

In our letter of audit findings sent to the Committee and Candidate on February 7, 1977, we recommended the following within 30 days of notification:

1) In the cases where verification had been obtained, we recommended that the Committee or the Candidate return to the individual involved the amount of his total contribution in excess of \$1,000, and provide verification of the refund to the Audit Staff.

2) Because Committee records were incomplete and did not allow a determination of whether excessive contributions occurred in the remaining four (4) instances, we recommended that the Committee obtain written confirmation from these individuals as to their loans to the Audit Staff for review. For those individuals whose contributions in fact exceeded \$1,000, in our correspondence advise that the Committee or the Candidate return to the contributor(s) the amount of his/her contribution in excess of \$1,000 and provide the Audit Staff with verification of the refund.

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Near the end of the original 30-day response period, the Treasurer and a representative of the Candidate were contacted and, based on their response, a 15-day extension to March 28, 1978, was granted. When no response was forthcoming on this matter the Audit staff sent letters of confirmation to the four (4) contributors involved on June 26, 1978. Responses promptly received confirmed that three (3) contributors were the same individuals who had made \$1,000 loans to the Committee. 3/

This matter was referred to the Office of General Counsel where Matter Under Review #724(78) was instituted on September 11, 1978.

On October 16, 1978, the Commission found reason to believe that the four (4) individuals involved apparently violated 2 U.S.C. 411a(a)(1)(A) by making contributions to the Party for Congress Committee in excess of \$1,000 per election, and that the Committee violated 2 U.S.C. 411(a) by accepting excessive contributions.

Because the amount by which the four (4) contributing individuals exceeded per election limits is relatively insignificant (four (4) contributions to total excessive contributions of \$73.00), and since each individual has been informed of the applicable contribution limits, the Commission approved the recommendation of the Office of General Counsel on November 20, 1978, to take no further action on this matter provided the Committee refunds the excessive contributions.

On March 26, 1979, sufficient documentation establishing the refunds was filed with the Commission and, upon the recommendation of the Office of General Counsel, the Council voted on April 11, 1979, to close the file on this matter and take no further action.

17. The fourth individual did not return his contribution until November 6, 1978, indicating an additional excessive contribution of \$110. This was referred to the Office of General Counsel which recommended this matter be dropped from consideration due to the lateness of response and the small amount involved.

B. Termination with Debts and Obligations Outstanding

Section 102.1(a) and (b) of Title II, Code of Federal Regulations states, in part, that each candidate and committee shall file quarterly reports until all debts and obligations are extinguished and the committee and candidate have filed a valid Notice of Termination. Section 102.4(b)(2) of the Regulations further provides that a principal campaign committee may not terminate until the candidate has terminated candidate status under the Act. A candidate may terminate his status, according to Section 101.1 of the Regulations, if he has filed a waiver of reporting pursuant to 11 CFR 101.3 and so long as the candidate has made no unreimbursable expenditures on behalf of the Committee. Such a waiver was filed by J. R. Kirke.

Also, Sections 104.8(a) and 104.12(b)(1) of the Regulations require, in part, that outstanding debts and obligations be continuously reported until extinguished and that a political committee or candidate who is a participant shall continue to be required to be reported so that its reports can be verified.

During the course of the audit, it was determined that the Committee owed a total of \$103,500 in loans during 1976. Of this amount, \$91,500 was borrowed from the Candidate who borrowed the funds from local banks, and \$12,000 was received from 16 individuals (14 loans of \$1,000 and two (2) of \$500). The notes on all of the individual \$1,000 loans were personal notes at a local bank guaranteed by the Candidate in his personal capacity. The Committee repaid none of the \$103,500 to the individuals or to the Candidate. The Candidate's payment to his personal and personal liabilities on the individual notes, paid off the bank notes of those persons who would or could not meet their obligations, although several individuals repaid their own notes. The funds the Candidate borrowed from local banks were first loaned, the candidate outright to the Committee.

All results also show that the Committee had an unmet and outstanding obligation to vendors. The exact amount of the obligations, which are reportedly being repaid by the Candidate, was unable to be determined. The inability to determine the exact status of the loan and the unmet obligations may be caused by a failure of the Committee to disclose all of its liabilities.

to pay these outstanding vendor obligations and to pay the Committee filed its last report for the first quarter of 1977 on June 2, 1977, unsigned. After several requests from the Commission the Committee resubmitted this report on October 5, 1977, properly signed, and stated that it was a termination report. The Treasurer indicated during fieldwork he was unaware that the Committee could not terminate prior to extinguishing all debts and obligations.

In our letter of audit findings sent to the Committee and Candidate on February 7, 1978, we recommended that the Committee and/or Candidate:

1) Obtain from the bank and submit to the Audit staff for review a complete history of the 15 individual loans. The history was to include copies of the original notes and any amendments thereto; collection of principal and interest; maturity; requirements of principal and interest; and by whom and by what means payments of principal and interest were made and from the individual and from the candidate.

2) Obtain from the bank all checks for 1977 and submit to the Audit staff for review. The collection of the Candidate's loans and other individual loans which he had repaid as a candidate for 1977. The history was to contain the information specified in 1).

3) Submit a general ledger detailing the national campaign obligations to which the Candidate has assumed.

4) File comprehensive general reports for the Committee and for the Candidate of its debts and obligations, including the termination of the Candidate's and individuals' loans and obligations. The Candidate was advised it must comply with this requirement if the Candidate has not already done so.

5) File comprehensive general reports for the Candidate and for the Committee of its debts and obligations, including the termination of the Candidate's and individuals' loans and obligations. The Candidate was also advised it must comply with this requirement if the Candidate has not already done so.

Candidate and/or Committee response to the audit recommendations above are detailed as follows with reference to their recommendation numbers:

1) On December 8, 1977 and April 3, 1978, the Committee and the Candidate, respectively, submitted documentation on the 16 individual loans which provided most of the information requested above. Additional information was provided by the bank involved on May 3, 1978, which verified interest payments on the various loans and was sufficient to satisfy the Audit staff's recommendation.

2) On April 3, 1978, the Candidate submitted adequate supporting documentation for those individual loans which he was jointly and severally liable and which he had repaid. In addition, with the Candidate's authorization, the banks involved submitted on May 5, 1978 and May 15, 1978, adequate supporting documentation for the Candidate's personal bank loans which were the source of his contributions to the Committee referred to above.

3) No response.

4) On April 5, 1978, the Committee filed the appropriate reports disclosing its residual obligations and the completion of the Candidate's and the 16 individuals' loans in its contributions.

5) No response.

Because of the lack of response to recommendations 3) and 5) noted above, and due to the receipt of additional information referred to in Finding A, this matter was included in a referral to the office of General Counsel where, on September 11, 1978, Matter Under Review #724(78) was instituted.

On October 16, 1978, the candidate found reason to believe that James R. Kirtz and the Study for Congress Committee (SFC) had not included in their report to the House, the name, and identification of certain contributors of an individual contribution related to the (recommendation 3, above).

On November 20, 1978, based on the Candidate's explanation that the residual obligation is under dispute, the Commission requested a copy of the details of the dispute or litigation involving the matter. This matter pertains to a contribution made in 1977 by the Candidate.

On March 26, 1979, the Candidate filed said statement and, upon the recommendation of the Office of General Counsel, the Commission voted on April 11, 1979, to close the file on this matter and take no further action.

In addition, on June 21, 1979, the Candidate filed a statement, in response to recommendation as above, in which he stated that only personal funds were used to retire that portion of the \$93,500 in personal bank loans (referred to above) which have been paid-off to date. In addition, he stated that only personal funds would be used to retire the remaining unpaid balance (\$29,000).

Based on the above, the Audit Division recommends no further action be taken on this matter.

C. Retention of Supporting Documentation for
Amendments

Section 412(d) of Title 2, United States Code, requires the treasurer to file in a book or books a bill, stating the particulars, for every amendment made by or on behalf of a political committee in excess of \$100 in amount, and for every amendment in a lesser sum, if the aggregate amount of such amendments in the year or a financial calendar year exceeds \$100. Section 412(d) of Title 2 of the United States Code states that when a printed bill is not available the treasurer may file the amended bill showing content of the bill, and the bill, together with other copies or copies memorandum of the transaction furnished to the committee by the press containing the particulars of the amendments.

A review of the Candidate's own committee records revealed that the committee did not retain printed bills, booklets or any supporting memoranda for 201 (77.45%) of the 257 amendments which received supporting documentation. There is no indication as to why the supporting memoranda of the amendments of amendments was required documentation. The committee indicated that the bills were not available to the public and that the bills were not available from the original submission by the candidate prior to the holding of the election.

In our letter of audit findings of February 7, 1978, we recommended that the Committee submit copies of the required documents or evidence of its best efforts to obtain them. On April 3, 1978, the Committee submitted documentation which indicated the dollar value of unsupported expenditures to \$24,293.97 (18.8% of the total dollar value).

Of the remained unsupported expenditures, 96 (accounting for 6.8% of the dollar value of unsupported expenditures) were made to part-time staff members who, according to the Treasurer, could no longer be contacted. The Treasurer has also stated that efforts were made to reach all the other vendors involved and request documentation.

Recommendation

Based on the above, the Audit staff believes the Committee has made a reasonable effort to comply with our recommendation. Therefore, no further action is recommended.

B. Filing of Year-End Report for 1976

Section 424(a)(1)(C) of Title 2, United States Code, requires that each treasurer of a political committee supporting a candidate for election to Federal office shall, in any calendar year in which an individual is a candidate, file a report of receipts and expenditures as of December 31 of such calendar year. Such report, to be filed not later than January 31 of the following calendar year, shall be made as of the close of the calendar year with respect to which the report is filed.

The pre-audit review of the Committee's reports uncovered no evidence that the 1976 Year-End Report had been filed. During the audit, the original copy of this report, which was never mailed, was discovered among Committee records. The Treasurer stated that the original copy was intact and was preparing the reports at that time and he (the Treasurer) was not aware of his failure to file the report in question.

In our letter of February 7, 1978, we recommended that the Committee submit the original 1976 Year-End Report. On April 9, 1978, the Committee filed the required year-end report.

Recommendation

Since the Committee has complied with our recommendation and submitted the original report, no further action is recommended.

E. Itemization of Expenditures

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

During the course of the audit, it was determined that, because of inadvertent omissions, the Committee did not itemize 22 of 227 expenditures (9.7%) each exceeding in excess of \$100 within the calendar year, totalling \$1,240.89 (40.9% of the dollar value of all expenditures requiring itemization).

In our letter of February 7, 1973, we recommended that the Committee file a comprehensive annual report to include the itemization of the 22 expenditures, covering the period January 1, 1972 through December 31, 1972. On April 5, 1973, the Committee submitted a complete annual report which satisfactorily disclosed the expenditures involved.

Recommendation

Since the Committee has complied with our recommendation on this matter, no further action is warranted.

F. Restrictions on In-Kind Contributions

Section 101(b)(1) of Title 2, United States Code, in part defines a contribution as a gift of anything of value. Section 101(b)(2) of Title 2, United States Code, requires, in part, that such contribution in excess of \$100 be itemized on disclosure reports. Section 101.3(d) of Title 41 Code of Federal Regulations further requires that each in-kind contribution in excess of \$100 be reported on both the expenditure and balance sheets and on the expenditure report filed with the agency, and that such in-kind contributions be:

During the course of the audit, it was determined that the Committee had received a contribution in the form of a building for a period of approximately six (6) months by 1972. Such in-kind contribution was not itemized on the expenditure report or on any expenditure report thereafter submitted to the Committee for its reports.

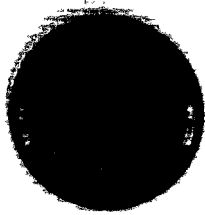
The Committee was advised to confer with the Candidate and arrive at the value of the usual and normal charge for the use of the space. The Treasurer stated the Committee was not aware of the reporting requirements for this type of transaction.

In our letter of February 7, 1978, we recommended that the Committee report this in-kind contribution as a receipt and an expenditure on its comprehensive amendment for the period January 1, 1976, through November 22, 1976.

On April 5, 1978, the Committee filed a comprehensive amendment which satisfactorily disclosed the requested information.

Recommendation

Since the Committee has complied in this matter, we recommend no further action.



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**115 A STREET N.W.
WASHINGTON, D.C. 20541**

**ADDITIONAL INFORMATION REGARDING THE CHALLENGE
MAY BE OBTAINED IN A CHALLENGE CHALLENGE ACTION
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THE FILE NUMBER WILL PROVIDE A BRIEF SUMMARY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.**



