

Admission file



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 4, 1979

MEMORANDUM

TO: FRED EILAND
PRESS OFFICE

THROUGH: BOB COSTA *RC*

FROM: JUDY HAWKINS

SUBJECT: PUBLIC ISSUANCE OF AUDIT REPORT -
MONTROYA FOR SENATOR CLUB (NM/SENATE)

Attached please find a copy of the final audit report of the Montoya For Senator Club (NM/SENATE) which was approved by the Commission on September 26, 1979.

All informational copies of the report have been received by all parties involved and this report may be released to the public. This completes the audits for the candidates for election from the State of New Mexico.

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 MONTOYA FOR SENATOR CLUB

I. Background

A. Overview

This report is based on an audit of the Montoya for Senator Club (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 Secretary of the Senate on April 17, 1975 in support of Joseph M. Montoya, candidate for election to the office of U.S. Senator from the state of New Mexico. The Committee maintains its headquarters in Santa Fe, New Mexico.

The audit covered the period from April 7, 1975 through December 31, 1977. The Committee reported a beginning cash balance on April 7, 1975 of \$-0-, total receipts for the period of \$498,633.07, total expenditures for the period of \$489,807.80 and a closing cash balance on March 31, 1977 1/ of \$8,624.27. 2/

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.

1/ The Committee filed FEC Form 3a on September 29, 1977 for the second quarter of 1977 (see Finding B).

2/ Committee reporting errors resulted in a difference totaling \$201 in ending cash. Amendments requested by the Audit staff have corrected the differences.



B. Key Personnel

The principal officers of the Committee during the period audited were Mr. William F. Burks, Chairman and Mr. Dan Smith, Treasurer.

C. Scope

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

II. Auditor's Statement

It is the opinion of the Audit staff, based upon examination of the reports and statements filed and records presented, that the Montoya for Senator Club has not conducted its activities in compliance with the Federal Election Campaign Act and that the reports and statements filed by the Committee did not fairly present the financial activities of the Committee for the period covered by the audit.

III. Audit Findings and Recommendations

A. Corporate Contributions

Section 441b of Title 2, United States Code, states in part that it is unlawful for any corporation to make a contribution or expenditure in connection with any election for Senator or for any candidate, political committee, or other person knowingly to accept or receive any contribution from a corporation.

The Audit staff verified through the appropriate Secretaries of State that the Committee received 32 contributions drawn on checks of business entities that were incorporated at the time the contributions were made. The 32 contributions totaled \$3,630.00.

Based on the Audit Division's recommendation, the Committee refunded all of the contributions and submitted copies of refund checks for the 32 contributions on August 24, 1978. On September 14, 1978, this matter was referred to the Commission's Office of General Counsel where MUR 727 was initiated. The Commission found reason to believe, on December 6, 1978, that the Committee accepted corporate contributions in violation of Section 441b of Title 2 United States Code. Subsequently, the Committee provided the Office of General Counsel with copies of the cancelled refund checks (front and back) for 31 of the contributions (one check had not cleared the bank) along with notarized statements from 30 corporations documenting receipt of the refund checks. In addition, one of the contributors provided evidence that the contribution was drawn from a personal account. Based on the facts stated above, the Commission voted on July 31, 1979, to take no further action in the matter and closed the file.

B. Failure to File Reports

Section 434(a) (B) and (C) of Title 2, United States Code states in part that in any year in which a candidate is not on the ballot for election to Federal office, such candidate and his authorized committee shall be required to file reports not later than the 10th day following the close of any calendar quarter in which the candidate and his authorized committee received contributions or made expenditures, or both, the total amount of which, taken together, exceeds \$5,000 except that such reports shall be filed after December 31 of such calendar year, but not later than January 31 of the following calendar year and shall be complete as of the close of the calendar year with respect to which the report is filed.

During the course of pre-audit review it was determined that the Committee had filed an FEC Form 3a for the period April 1 to June 30, 1977 received on September 16, 1977 and that no reports had been filed by the Committee for the third and fourth quarters of 1977. In addition, the candidate had not filed any reports covering the period January 1, 1977 through December 31, 1977. Committee officials stated that the reports were not filed because of administrative problems. 3/

3/ Also relating to the filing of reports was MUR 429. This compliance action concerned the Respondent Committee's failure to file complete and accurate receipt(s) and expenditure(s) reports commencing with the October 10, 1976 report through the July 10, 1977 report. The Respondent Committee subsequently filed amended reports for the period mentioned to comply with the Act, signed a conciliation agreement containing admissions of guilt, and made payment of a \$100 civil penalty. On July 11, 1978, the Commission voted to approve the conciliation agreement and close the file.

Recommendation

The Audit staff recommends no further action in this matter since, the Committee has complied with the Audit staff's recommendation and filed a comprehensive amendment on July 5, 1978 covering the period January 1, 1977 through December 31, 1977. In addition, the Treasurer of the Committee submitted a statement on August 24, 1978 explaining that to the best of his knowledge, the Senator neither received nor expended funds on behalf of his campaign during 1977.

C. Reporting of Contributions

Section 434(b)(2) of Title 2, United States Code, states, in part, that each report shall disclose the full name and mailing address (occupation and principal place of business, if any) of each person who has made one or more contributions to or for the Committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$100, together with the amount and date of such contributions. Section 434(b)(8) of Title 2, United States Code requires the reports to disclose the total sum of all receipts by or for the Committee or candidate during the reporting period.

In addition, Section 104.3(a) of Title 11, Code of Federal Regulations states that each in-kind contribution shall be valued at the usual and normal charge on the date received and reported, if in excess of \$100, on the appropriate schedule of receipts and expenditures, identified as to its nature and listed as an "in-kind contribution."

A comparison of the Committee's reports to its receipt records revealed that the Committee did not report \$25,988.81 in receipts. This amount includes \$2,221.44 received as a result of a fundraising event. The Committee filed a Schedule D for this event, but failed to include the amount in total receipts. These unreported receipts accounted for 4.95% of the total dollar volume of Committee receipts.

The Committee's receipt records also showed 16 in-kind contributions totalling \$3,236.76 received from individuals which were not reported. The Committee could not explain the failure to report these in-kind contributions.

Recommendation

The Audit staff recommends no further action in this matter since the Committee has complied with the Audit staff's recommendation and filed comprehensive amendments on July 5, 1978, reporting the previously unreported receipts and in-kind contributions.

D. Reporting of Expenditures

Section 434(b)(11) of Title 2, United States Code, states, in part, that each report shall disclose the total sum of expenditures made by the committee or candidate during the calendar year. Sections 434(b)(9) and (10) require the disclosure of the identification of each person to whom expenditures have been made by the committee or on behalf of the committee or candidate within the calendar year in an aggregate amount or value in excess of \$100, the amount, date, and purpose of each such expenditure including expenditures for personal services, salaries, and reimbursed expenses.

The Committee made 151 expenditures totaling \$23,000.96 which were not reported. These expenditures accounted for 20.46% of the total number of expenditures made by the Committee and 4.49% of the total dollar volume. The majority of the unreported expenditures were made through checking accounts maintained by county agents of the Committee. Committee officials could offer no explanation for the non-reporting of the expenditures.

In addition, a comparison of the Committee's cancelled checks and reports revealed 27 expenditures reported incorrectly. The reporting errors resulted in a \$6,600.76 overstatement of reported expenditures. The errors were due to the Committee reporting employee's gross salaries, as well as payments made by the Committee from funds withheld from the salaries along with other bookkeeping errors.

Recommendation

The Audit staff recommends no further action in this matter since the Committee has complied with the Audit staff's recommendation and filed comprehensive amendments on July 5, 1978, reporting the unreported expenditures and correcting the incorrectly reported items.

E. Disclosure of Transfers from Political Committees

Section 434(b)(4) of Title 2 of the United States Code states, in part, that a political committee must disclose in its reports the name and address of each political committee which made any transfer of funds to the political committee, together with the amounts and dates of all transfers.

A review of the Committee's receipts records showed 17 transfers-in totalling \$3,692.00 either not reported or reported incorrectly. These transfers accounted for 2.67% of the total dollar volume and 12.06% of the total number of transfers received by the Committee. A Committee official explained that some of the transfers may have been attributed to the maker of the check rather than the political committee transferring the funds.

Recommendation

The Audit staff recommends no further action in this matter since the Committee has complied with the Audit staff's recommendation and filed comprehensive amendments disclosing the transfers as required.

F. Expenditures Not Fully Supported

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

Section 102.9(c)(4) of Title 11, Code of Federal Regulations states, in part, that when a receipted bill is not available, the treasurer may keep the cancelled check and the bill, invoice or other contemporaneous memorandum.

A review of Committee records showed that the Committee failed to obtain a bill, invoice or other contemporaneous memorandum for 194 expenditures in excess of, or aggregating in excess of \$100, totalling \$295,731.17. These unsupported expenditures accounted for 42.27% of the total number and 60.87% of the total dollar value of expenditures requiring such supporting documentation.

Based on the Audit Division's recommendation, the Committee submitted information which they stated supported all of the expenditures. A review of the submitted documentation revealed that the Committee had provided the required documentation or presented its efforts to do so for 184 of the expenditures. However, the Committee had not obtained documentation which sufficiently identified the purpose nor ultimate payee for ten expenditures to ten individuals totaling \$21,733. All of the expenditures were for Get-Out-The-Vote purposes. In addition, it was determined that the Committee had not maintained records on 15 transfers totaling \$11,953.00 made to 12 non-registered county committees also for Get-Out-The-Vote purposes.

On October 16, 1978, these matters were referred to the Commission's Office of General Counsel and incorporated into MUR 727. The Commission found reason to believe on December 6, 1978, that the Committee had violated Section 432(d) of Title 2 United States Code by failing to obtain and provide supporting documentation for ten expenditures to ten individuals and failing to maintain and provide records of 15 transfers to 12 non-registered county committees. The Committee made efforts to obtain the documentation but received responses for only four (4) expenditures to individuals and three (3) transfers to the non-registered county committees. Based on the Committee's demonstrated best efforts to obtain the documentation the Commission voted to close the file in the matter on July 31, 1979 and take no further action.

G. Fundraising Not Disclosed

Section 434(b)(6) of Title 2, United States Code, states that each report shall disclose the total amount of proceeds from the sale of tickets to each dinner, luncheon, rally, and other fundraising event, mass collections made at such events, and sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similiar materials.

The Committee conducted nine (9) fundraisers throughout the period covered by the audit. Proceeds from six (6) of the fundraisers were not disclosed on Schedule D as required. The Committee did not have records available pertaining to the receipts from one of the fundraisers; however, the Candidate stated that an attempt would be made to obtain the records pertaining to that fundraiser.

Recommendation

The Audit staff recommends no further action since the Committee has complied with the Audit staff's recommendation and has filed schedule D's disclosing the proceeds from the fundraisers.

H. Disclosure of Repositories

Section 433(b)(9) of Title 2, United States Code, states that a committee's statement of organization shall include a listing of all banks, safety deposit boxes, or other repositories used, while Section 433(c) of Title 2, United States Code, requires any change in information previously submitted in a statement of organization to be reported to the Commission within a ten day period following the change.

The Committee maintained ten accounts in nine (9) depositories throughout the period audited. Two (2) of the depositories were disclosed on the Committee's statement of organization filed on April 17, 1975 and an additional three (3) were included in an amendment filed on March 24, 1976. The remaining four (4) depositories were not disclosed by the Committee. The Committee could not offer an explanation as to why the depositories were not disclosed.

Recommendation

The Audit Division recommends no further action in this matter since the Committee has complied with the Audit staff's recommendation and filed an amendment to its statement of organization on August 24, 1978 disclosing the four (4) depositories.

I. Cash Contributions in Excess of Limit

Section 441g of Title 2, United States Code, states that no person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

A review of the Committee's contribution records showed three (3) cash contributions received by the Committee from two (2) individuals totaling \$385.00 (\$200 from one and \$185 from the other). Committee officials could offer no explanation for the acceptance of the cash in excess of the limit.

Based on the Audit Division's recommendation on August 1, 1978, the Committee supplied us with copies of the checks refunding the excess portions of the contributions.

Recommendation

The Audit Division recommends no further action in this matter since the contributions have been refunded.

J. Other Matters

Presented below is another matter noted during the audit for which the Audit Staff feels no action is warranted. The Committee has been advised of the discrepancy and informed of the respective requirement of the Act.

During the period November 1, 1975 through May 7, 1976, the Committee maintained a savings account into which contributions were deposited directly in violation of Section 103.3(a) of Title 11 of the Code of Federal Regulations. All contributions deposited into the account were properly reported by the Committee.



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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 # 727 .
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.



THE
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535