

CONGRESSIONAL AUDIT REPORT

Candidate/Committee: James Guffey - 3/7/79

State: South Dakota

District: 1st

Location: Sioux Falls

Political Party Affiliation: Democrat

Major Opponent(s): Larry Pressler (R)

Other Candidates Audited: Larry Pressler - 2/9/78

Votes Cast: General Election -	Larry Pressler (R)	121,587 - 79.3%
	James Guffey (D)	29,533 - 19.4%
	Donald Stevens (I)	1,282 - 0.8%
Primary Election -	Unopposed	

Total Receipts for Period: \$42,328.38

Total Expenditures for Period: \$40,021.47

First Elected (if applicable): N/A



FEDERAL ELECTION COMMISSION

1125 K STREET, N.W.
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON THE GUFFEY IN THE FIRST COMMITTEE

I. Background

A. Overview

This report is based on the audit of the Guffey In The First Committee ("the Committee") undertaken by the Audit Division of the Federal Election Commission 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, United States Code, which authorizes 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 March 29, 1976, as the principal campaign committee for Mr. James V. Guffey, a candidate for election to the United States House of Representatives from the First District of South Dakota. The Committee maintained its headquarters in Sioux Falls, South Dakota.

The audit covered the period April 1, 1976 through June 30, 1977. During that period the Committee reported beginning cash of \$460.00 ^{1/}, receipts of \$42,328.38, expenditures of \$40,021.47 and ending cash of \$2,766.91.

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

^{1/} The reported cash actually represented unitemizable receipts collected by the Committee during the period March 24 through March 31, 1976, the first week of its operations.

B. Key Personnel

The principal officers of the Committee during the period of the audit were Mr. Lawrence Piersol, Chairman, and Mr. James T. McDermott, 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 Statement and Description of Findings

It is the opinion of the Audit staff that, based on the examination of disclosure reports and records presented, the Guffey In The First Committee has not conducted its activities in compliance with the Federal Election Campaign Act of 1971, as amended, and that the disclosure reports, as originally filed, do not fairly present the financial activity of the Committee for the audit period.

In a letter dated January 23, 1978, the Committee Treasurer and the Candidate were formally advised of the audit findings, and requested to respond to the various recommendations therein within 30 days of notification. An additional 15 day extension to the response period was granted to March 14, 1978. Due to the lack of response from the Treasurer and only minimal response from the Candidate, the various matters contained herein were referred, at the request of the Commission, to the Office of General Counsel on April 7, 1978, for treatment as Matter Under Review #573.

On May 5, 1978, the Commission found reason to believe that the Committee and/or Candidate had violated those Sections of the Act pertinent to each as set forth below.

After allowing a reasonable period for the Committee and the Candidate to demonstrate why no further action should be taken against them, the Commission, on July 12, 1978, found reasonable cause to believe that the Committee and/or the Candidate had violated the Sections of the Act noted below. Subsequently, the Commission entered into a conciliation process with the Committee and the Candidate during which efforts were made by respondents to achieve compliance by filing various amended reports and documentation, as detailed below.

The conciliation process culminated in revised agreements, providing for civil penalties of \$50, which were signed by the Candidate and Committee Treasurer on December 29, 1978 and December 15, 1978 respectively, and accepted by the Commission on January 23, 1979.

Based on the recommendation of the Office of General Counsel, the Commission voted on January 23, 1979 to close the file on this matter and take no further action.

A. Filing of Year-End Disclosure Report

Section 434(a)(1)(b) of Title 2 of the United States Code requires each treasurer of a political committee supporting a candidate for election to Federal office, in an election year, to file with the Commission a year-end report of receipts and expenditures as of December 31 of such calendar year. The report, to be filed not later than January 31 of the following calendar year, shall be complete as of the close of the calendar year.

Our review of the Committee reports filed during the period showed no evidence that a year-end report had been filed on or before January 31, 1977 disclosing all activity between November 23, 1976 and December 31, 1976, as well as totals for the calendar year. Discussions with the Treasurer confirmed that the subject report had not been filed, but no explanation was offered for its omission.

We recommended that the Committee file within 30 days a year-end report for 1976, including all unreported activity from November 23 - December 31, 1976, and accurately reflecting year-end totals. As a result of efforts made during the conciliation stage of the compliance procedure, the Committee Treasurer submitted the required year-end report for 1976 on September 1, 1978.

Recommendation

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

B. Disclosure of Debts and Obligations Until Extinguished, Candidate Reporting, and Recordkeeping

Section 434(b)(12) of Title 2 of the United States Code requires a committee or candidate to continuously report debts and obligations until extinguished and further requires disclosure of the circumstances and conditions under which any debt or obligation is extinguished.

Section 102.4(b)(2) of Title 11, Code of Federal Regulations, further provides that a principal campaign committee may not terminate until the candidate has terminated candidate status under the Act. A candidate may not terminate status, according to Section 101.1 of the Regulations, until all campaign-related debts and obligations for which he is personally obligated are extinguished.

Section 434(a) of Title 2 of the United States Code requires candidates as well as committees to file reports of receipts and expenditures, although Section 101.3 of the Commission's Regulations provides that a candidate may be relieved from filing personal reports if he will receive no contributions that are not surrendered to an authorized committee, or make no expenditures for which he will not be reimbursed by his campaign committee. The waiver from reporting remains in effect as long as the candidate complies with the conditions under which it is granted.

Section 104.12(b)(1) of the Commission's Regulations requires a political committee or candidate to maintain records of sufficient detail on matters required to be reported so that reports can be verified.

The last full report filed by the Committee at the time of audit fieldwork (30-day post-general election report) 2/ reflected total outstanding debts and obligations of \$16,343.39, including \$8,500 owed to the Candidate which represented personal bank loans obtained by him and then loaned to the Committee. The Treasurer indicated that the Candidate has assumed the responsibility for all of the Committee's previously reported debts and obligations. However, disclosure of the liquidation of the Committee's debts by transfer to the Candidate was not made.

2/ As noted in Finding A above, the Committee did not file a year-end report for 1976 as required. The Committee filed only FEC Form 3a (postcard form) for the first calendar quarter of 1977.

The Candidate, who had requested a waiver from filing personal candidate reports pursuant to Section 101.3 of the Commission's Regulations 3/, advised that he had expended personal monies in payment on some of the Committee's debts and obligations since the last full disclosure report was filed by the Committee. The Candidate, upon personal assumption of the Committee's debts and obligations and his subsequent personal expenditures made in payment on those debts, was no longer entitled to a waiver from reporting and became subject to the reporting requirements of Section 434(a) of Title 2 of the United States Code. However, such a report was not filed by the Candidate.

We recommended that the Committee and/or the Candidate, within 30 days: 1) File a Committee report and a Candidate report showing the Candidate's assumption of campaign debts and obligations from the Committee, cumulative payments made to date by the Candidate, and balances outstanding; 2) File candidate reports as applicable from the closing date of the report disclosing the Candidate's debt assumption until all campaign-related debts and obligations are extinguished and Candidate's status is terminated, as required by the Act; 3) Obtain from the bank involved, and submit to the Audit staff for review, a complete history of loans made to the Candidate, to include copies of the original notes, a description of collateral, if any, terms, interest rate, and any repayment(s) made to date.

As a result of efforts made during the conciliation stage of the compliance procedure, the Committee Treasurer filed on September 1, 1978, a year-end report for 1977 which adequately disclosed the Candidate's assumption of campaign debts and obligations. The Candidate filed on September 25, 1978, a report satisfactorily showing his assumption of the debts, payments made by him and outstanding balances. In addition, on March 17, 1978 and October 18, 1978, the Candidate submitted satisfactory documents pertaining to his bank loans used for campaign purposes.

Recommendation

Since the Committee and the Candidate have satisfactorily complied in these matters, we recommend no further action.

3/ Although the Commission's Regulations were not yet in effect at the time the waiver was requested, the Commission was honoring the waiver provisions when a candidate indicated on his Statement of a Candidate (FEC Form 2) that all campaign finances were being handled by an authorized committee.

C. Reporting of Expenditures

Section 434(b)(9) and (10) of Title 2 of the United States Code requires a committee to identify in their disclosure reports each person to whom expenditures have been made within the calendar year in an aggregate amount in excess of \$100, together with the amount, date and purpose of each such expenditure; and, Section 434(b)(11) of Title 2 of the United States Code requires a committee to report the total sum of expenditures made by such committee during the calendar year.

During the campaign, the Committee maintained two (2) bank accounts, one for general campaign purposes and the other as an expense account for the Candidate's personal travel expenses during the campaign. The latter account was, according to the Treasurer, supposed to be funded only by transfers from the general campaign fund.

During the course of our examination of expenditures, it was determined that a total of 81 expenditures made by the Committee, representing 23.4% of the total number made, were not reported by the Committee in its disclosure reports filed with the Commission. These expenditures amounted to \$4,082.81 (9.3% of the total dollar value of all expenditures incurred by the Committee), and included all expenditures made from the candidate expense account which totaled \$3,292.44. In addition, the Committee failed to itemize 25 of these expenditures totaling \$1,957.16 which were in excess of \$100 or aggregated in excess of \$100. The Treasurer stated that these expenditures were omitted from the reports and not itemized as required due to a combination of clerical oversight and lack of control over the Candidate's travel expenses.

We recommended that the Committee file a comprehensive amendment for 1976, including the previously omitted expenditures itemized where required, within 30 days. As part of the efforts made during the conciliation stage of the compliance procedures, the Committee Treasurer submitted on September 1, 1978, a comprehensive amendment for 1976 and a report for 1977 accurately disclosing the subject expenditures.

Recommendation

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

D. Reporting of Receipts and Recordkeeping

Section 432(c)(1) of Title 2 of the United States Code requires the treasurer of a political committee to keep a detailed and exact account of all contributions made to or for such committee and to identify each person making a contribution in excess of \$50, and the date and amount thereof. Section 434(b)(8) of Title 2 of the United States Code requires a committee to report the total sum of all receipts by such committee during the reporting period. Section 434(b)(2) and (4) of Title 2 of the United States Code further requires the committee to report the full name, mailing address, occupation and principal place of business (if any) of each person who has made one or more contributions within the calendar year in an aggregate amount in excess of \$100, and/or the name and address of each political committee from which funds were transferred, together with the date and amount of the transfer and/or contribution.

Our audit revealed that there were two (2) deposits to the candidate expense account totaling \$1,236.86 which were not inter-account transfers from the general campaign account and for which the Treasurer did not maintain any account or record thereof. Furthermore, we determined that the Committee did not include these deposits in its receipt totals in reports filed to date with the Commission.

Our audit also disclosed receipts for the period totaling \$460 which were not reported as such, but rather, which the Committee included as beginning cash on its first disclosure report filed (April 1, 1976 through May 17, 1976).

We recommended that the Committee and/or the Candidate submit for review within 30 days sufficient documentation establishing the source of the unidentified deposits to the candidate expense account and file a comprehensive amendment for 1976 including the total of these receipts (\$1,696.86), itemized as necessary. As part of the efforts made during the conciliation stage of the compliance procedure, the Committee Treasurer and the Candidate submitted on September 1, 1978 and October 18, 1978, respectively, sufficient documentation establishing the source of the deposits in question and an amended report materially disclosing the receipts, as required.

Recommendation

Since the Committee and Candidate have satisfactorily complied in these matters, we recommend no further action.

E. Retention of Supporting Documentation for Expenditures

Section 432(d) of Title 2 of the United States Code requires the treasurer to keep a receipted bill, stating the particulars, for every expenditure made by a political committee in excess of \$100 in amount or aggregating in excess of \$100 to the same person during a calendar year.

It was determined that of 238 expenditures requiring supporting documentation, 104 expenditures (or 43.7%) lacked adequate supporting documentation. These 104 expenditures totaled \$20,855.74, and represented 47.8% of the total expenditures requiring such documentation. Of the inadequately supported expenditures, 68 represented reimbursements to campaign staff workers, 13 for various media expenses, and 23 were for miscellaneous purposes. The Treasurer noted that this problem was most likely caused by a lack of control over invoice retention during the campaign.

We recommended that the Committee obtain and furnish to the Audit staff within 30 days copies of adequate supporting documentation for these expenditures, or evidence of their best efforts to obtain it. As part of efforts made during the conciliation stage of the compliance procedures, the Committee Treasurer submitted on August 21 and September 1, 1978, sufficient documentation and/or evidence of efforts to obtain documentation for 94.33 of the above cited expenditures.

Recommendation

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



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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 # 573.
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.



