



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

MH002594

March 5, 1992

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT
ON CARDINO '88

Attached please find a copy of the Final Audit Report on Cardino '88, which was approved by the Commission on February 27, 1992.

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



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REPORT OF THE AUDIT DIVISION
ON
CARDINO '88

I. Background

A. Overview

This report is based on an audit of Cardino '88 ("the Committee") undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the Federal Election Commission on July 18, 1988, and maintains its headquarters in Copiague, New York.

The audit covered the period June 6, 1988 through December 31, 1988. The Committee reported a beginning cash balance of \$-0-; total receipts of \$61,596.28; total disbursements of \$61,596.28; and an ending cash balance on December 31, 1988 of \$-0-.

*/ As of the close of fieldwork, no reports for the period October 20, 1988 through December 31, 1988 had been filed. On August 15, 1991, the Committee filed a report disclosing the previously undisclosed activity (see Finding II.A.).

This report is based on documents and workpapers 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 the Commissioners and appropriate staff for review.

B. Key Personnel

During the period covered by the audit, the Committee's Treasurer was Joseph B. Gagliardo.

C. Scope

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

II. Audit Findings and Recommendations

A. Filing of Disclosure Reports

Sections 434(a)(1), (2)(A)(ii) and (iii) of Title 2 of the United States Code state, in part, that the treasurer shall file reports of receipts and disbursements in accordance with the provisions of the Act. If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate in any calendar year during which there is a regularly scheduled election for which such candidate is seeking election a post-general election report and a report for the quarter ending December 31 shall be filed.

A review of the Committee's filings revealed that the Committee did not file disclosure reports for the period October 20, 1988 through December 31, 1988. According to bank statements and other Committee records, the Audit staff identified receipt activity totaling \$5,919 and disbursement activity totaling \$27,867.79 which should have been reported.

Neither the Candidate nor the Assistant Treasurer^{*/} was aware that the reports were not filed but expressed a willingness to file the disclosure reports for the period noted above.

In the interim audit report, the Audit staff recommended the Committee submit disclosure reports covering the period October 20, 1988 through December 31, 1988, as well as filings for any required disclosure reports subsequent to December 31, 1988.

On August 15, 1991, the Committee filed a comprehensive amendment for calendar year 1988 which included the undisclosed

^{*/} The Treasurer did not attend the exit conference.

financial activity for the period October 20, 1988 through December 31, 1988. Further, the Committee filed disclosure reports for the calendar years 1989 and 1990.

Recommendation #1

Based on the above, the Audit staff recommends no further action on this matter.

B. Loan Activity

Section 431(8)(B)(vii) of Title 2 of the United States Code states, in part, that the term contribution does not include any loan of money by a State bank or a federally chartered depository institution made in accordance with applicable law and in the ordinary course of business, but such loan shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule, and such loan shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

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 in connection with any primary election or caucus held to select candidates for any political office, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by the section.

Section 100.7(b)(11) of Title 11 of the Code of Federal Regulations states, in part, that a loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule.-

On or about June 22, 1988, the Candidate obtained a \$10,000 loan from The Bank of New York ("the Bank"). The loan proceeds were deposited into the Candidate's personal checking account. On June 22, 1988, the Candidate issued his personal check for \$10,000 to the Committee. The Committee reported the \$10,000 loan as a debt owed to the Bank, and endorsed or guaranteed by the Candidate.

A photocopy of the promissory note signed by the Candidate was not dated, stated an annual percentage rate of 12.90 percent and required 12 monthly payments of \$895.65 commencing on

* / Citations to 11 C.F.R. §§100 - 116 refer to the regulations in effect for the 1988 cycle, unless otherwise noted.

July 22, 1988. According to the promissory note, no collateral was pledged and there were no guarantors.

By checks dated October 14, 1988 and October 21, 1988, the Committee paid the Candidate \$900 and \$6,000 respectively, however, it is not known if the Candidate repaid the Bank. Since the Committee had not filed a disclosure report covering activity subsequent to the closing date of its last report (10-19-88), the disposition of the loan was not known during audit fieldwork.

When questioned by the Audit staff, the Candidate stated initially that the loan was repaid timely. However, the Candidate then stated the loan may not have been repaid timely, since he and the Bank disagreed on the final amount due on the loan. The Candidate then stated that the Bank, in an attempt to secure the final payment, attached a business escrow account that the Candidate maintained at the Bank. Finally, when asked, the Candidate stated that the Bank was not aware it was making a loan to a political committee.

Due to the Committee's failure to file disclosure reports and the lack of bank documentation available for review, many aspects of this loan are not known. However, it appears that the loan may not have been made in the ordinary course of business, since no documentation was provided indicating that the loan was made on a basis which assured repayment.

In the interim audit report, the Audit staff recommended the Committee provide the following:

- a copy of the loan application on file at the Bank;
- copies of all other bank documents with respect to this loan to include but not be limited to, a dated copy of the promissory note, copies of any security related document and the Bank's perfection of same, etc.;
- a detailed explanation from the Candidate concerning the discrepancy with the Bank relative to the final payment on the loan;
- an official schedule from the Bank listing the dates, amounts, and source of all loan payments (personal check of the Candidate, Committee check, etc.); and,
- an explanation from the Bank as to why the loan should be considered made in the ordinary course of business.

In response to the interim audit report, the Committee made available the requested documentation from the Candidate as well as from The Bank of New York. The documentation included a copy of the loan application, a dated promissory note, a detailed

schedule of loan payments provided by the Bank, a letter from the Bank stating that the loan was a normal unsecured personal loan and made in the "ordinary course of business" and a letter of explanation of late payment on loan from Joseph Cardino, Jr. As a result, it is the opinion of the Audit staff that the Bank did not know it was making a loan to a political committee; and, based on a review of all documentation made available, it appears that the loan was made in accordance with applicable law and in the ordinary course of business.

Recommendation #2

Based on the above, the Audit staff recommends no further action on this matter.

C. Misstatement of Financial Activity

Sections 434(b)(2) and (4) of Title 2 of the United States Code state, in part, that each report shall disclose, for the reporting period and calendar year, the total amount of all receipts and the total amount of all disbursements.

A reconciliation of bank activity to the disclosure reports filed by the Committee from inception through October 19, 1988 revealed the following misstatements:

Receipts

Reported receipts were understated by a net amount of \$4,323.58 (\$4,446.99 - \$150 + \$26.59). The understatement was a result of the following:

- the Committee failed to report contributions totaling \$4,446.99;
- the Committee reported as contributions N.S.F. checks totaling \$150; and
- an unexplained difference of \$26.59.

Disbursements

Reported disbursements were understated by a net amount of \$196.31 (\$457.80 - \$236.50 - \$24.99). The understatement was a result of the following:

- the Committee failed to report disbursements totaling \$457.80;
- the Committee reported a check, totaling \$236.50, which was later voided and made no adjustment; and,
- the Committee incorrectly reported disbursements in an amount totaling \$24.99 (net).

It should be noted that the Committee did not make available to the Audit staff two bank statements which covered the period June 14, 1988 through August 11, 1988. Using deposit records in conjunction with disbursement records (canceled checks, check register, etc.) the Audit staff developed the dollar value of receipt and disbursement activity for this period.

The Assistant Treasurer was given a detailed list of the above reconciling items and indicated his willingness to file amendments.

In the interim audit report, the Audit staff recommended that the Committee, file a comprehensive amendment to disclose the above receipts and disbursements, as well as, provide copies of the two missing bank statements (statements only).

On August 15, 1991, the Committee filed a comprehensive amendment for calendar year 1988 which materially corrected the misstated receipts and disbursements. Further, on October 4, 1991, the Committee provided the Audit staff with the missing bank records. Our review indicated that the dollar value of the activity developed by the Audit staff for the period June 14, 1988 through August 11, 1988 was materially correct.

Recommendation #3

Based on the above, the Audit staff recommends no further action on this matter.

D. Documentation for Disbursements

Section 432(c)(5) of Title 2 of the United States Code states that the treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

During our review of disbursements, the Audit staff identified 9 expenditures, in excess of \$200, totaling \$8,179, which lacked supporting documentation (i.e., receipted bill, invoice or canceled check).

At the exit conference, the Assistant Treasurer was provided with a photocopy of a schedule of disbursements which lacked the required supporting documentation. The Committee indicated a willingness to obtain and submit the appropriate documentation.

In the interim audit report, the Audit staff recommended that the Committee, obtain and submit documentation to support the

disbursements and/or provide evidence that demonstrates the Committee's efforts to obtain said documentation.

On October 4, 1991, in response to the interim audit report, the Committee made available the canceled checks (front and back) which in this instance were sufficient for documentation purposes.

Recommendation #4

Based on the above, the Audit staff recommends no further action on this matter.

E. Disclosure of Required Information

1. Receipts

Sections 434(b)(2)(A) and (3)(A) of Title 2 of the United States Code state, in part, that each report under this section shall disclose, for the reporting period and calendar year, the total amount of all receipts/contributions from persons other than political committees; and the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code states that the term "identification" means in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

Section 104.3(a)(4) of Title 11 of the Code of Federal Regulations states, in part, that the identification of each contributor and the aggregate year-to-date total for such contributor shall be reported.

A comparison of Committee contribution records to reported activity revealed that for 40 contributions, totaling \$18,625, the Committee failed to disclose certain information. The Audit staff identified the majority of problems as having occurred within name, mailing address, occupation/name of employer and aggregate year-to-date totals.

On January 22, 1991, the Candidate was provided, via facsimile transmission, a photocopy of a schedule on which the aforementioned irregularities were detailed. At the exit conference, the Assistant Treasurer indicated the Committee's willingness to amend its reports to correct the public record.

In the interim audit report, the Audit staff recommended the Committee file amended Schedules A to disclose the required information.

On August 15, 1991, in response to the interim audit report, the Committee filed a comprehensive amendment which materially corrected the missing disclosure information noted above.

Recommendation #5

Based the above, the Audit staff recommends no further action on this matter.

2. Disbursements

Sections 434(b)(4)(A) and (5)(A) of Title 2 of the United States Code state, in part, that each report under this section shall disclose, for the reporting period and the calendar year, the total amount of all disbursements; expenditures made to meet candidate or committee operating expenses; and, the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Our review of disclosure reports noted that the Committee omitted addresses for 58 payees whose disbursements totaled \$28,581.10. In many instances, the payees' addresses were maintained in the Committee's disbursement files.

At the exit conference, the Assistant Treasurer expressed the Committee's willingness to amend its reports to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules B to disclose the omitted addresses.

On August 15, 1991, the Committee filed a comprehensive amendment which properly disclosed the omitted addresses.

Recommendation #6

Based on the above, the Audit staff recommends no further action on this matter.

3. Debts and Obligations

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations

owed by or to a political committee which remain outstanding shall be continuously reported until extinguished and shall be reported on separate schedules together with a statement explaining the circumstances of the debt and obligation; and debts of \$500 or less must be disclosed on the first report filed after the debt has been outstanding 60 days and debts over \$500 must be disclosed on the report covering the reporting period during which the debt was incurred.

It should be noted that for the period covered by the disclosure reports initially filed (June 1, 1988 through October 19, 1988) no Schedules D for line 10 (Debts and Obligations owed by the Committee) were included. However, our review of disbursement files (invoices, canceled checks, etc.) made available revealed that the Committee had outstanding debts and obligations which should have been disclosed. A recap of reportable debts and obligations outstanding at the close of the specified reporting period is as follows:

| <u>Report Period Ending</u> | <u>Number of Reportable Debts & Oblig.</u> | <u>Amount^{*/} to be Reported</u> |
|-------------------------------------|--|---|
| 09/03/88 | 7 | \$3,710.26 |
| 10/19/88 | 14 | 2,520.41 |
| 11/28/88 | 9 | 3,764.49 |
| 12/31/88 | 6 | 631.11 |

As required by 11 C.F.R. § 104.11 (a) debts or obligations which remain outstanding at the close of a reporting period must be continuously reported until extinguished.

At the exit conference, the Assistant Treasurer was provided with a photocopy of a schedule which detailed the debts and obligations not disclosed. The Committee indicated a willingness to file amendments to correct the public record.

In the interim audit report, the Audit staff recommended the Committee file amended reports to include Schedules D, identifying debts and obligations for the periods noted above, and to continuously report such debts and obligations until extinguished.

On August 15, 1991, the Committee filed a comprehensive amendment which disclosed 5 debts to four vendors, totaling \$1,916.77. On October 11, 1991, the Committee provided

^{*/} The amounts represent only those debts and obligations which require disclosure for the first time, i.e., a debt required to be disclosed at the close of the 9/3/88 reporting period and not paid at the close of the 10/19/88 reporting period is not included in the above total for 10/19/88.

documentation which demonstrated that 15 other debts were not owed. However, the Committee's response failed to address 16 debts to six vendors, totaling \$1,441.44. The Assistant Treasurer was informed of the above omissions, but has not responded to date. It should be noted that the 16 undisclosed debts were all paid prior to December 31, 1988, and the related expenditures were itemized on Schedule B as required.

Recommendation #7

Based on the above, it is the Audit staff's opinion that no further action is necessary.

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