



FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20543

MW004739

December 29, 1992

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT
ON DAVE EMERY FOR CONGRESS

Attached please find a copy of the Final Audit Report on Dave Emery for Congress, which was approved by the Commission on December 15, 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



FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20461

MW003904

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REPORT OF THE AUDIT DIVISION
ON
DAVE EMERY FOR CONGRESS

I. Background

A. Overview

100-120194

This report is based on an audit of Dave Emery for Congress ("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 Clerk of the U.S. House of Representatives on December 19, 1989 as the principal campaign committee for David F. Emery, Republican candidate for the U.S. House of Representatives from the state of Maine. The Committee maintains its headquarters in Tenants Harbor, Maine.

The audit covered the period from November 7, 1989, the date of the Committee's first recorded transaction, through December 31, 1990. The Committee reported a beginning cash balance of \$0; total receipts for the period of \$465,553.85;*/

*/ Total receipts and total disbursements were derived by summing the current period totals for each reporting period. This differs from the figures for total receipts and total disbursements (\$469,973.55 and \$462,333.95, respectively) derived by summing the amounts reported as calendar year-to-date for 1989 and 1990. The reported figures were determined to be misstated (See Finding II.A.).

total disbursements for the period of \$463,876.86; and a closing cash balance on December 31, 1990 of \$1,676.99.

This report is based on documents and workpapers which support each of its 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 the Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurer of the Committee during the period covered by the audit was Mr. P. James Nicholson.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements 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, except that although the Committee's recordkeeping with respect to receipts appears to be in compliance with 2 U.S.C. §432(c), much of the supporting documentation reviewed was internally generated.

II. Audit Findings and Recommendations

A. Misstatement of Financial Activity

Sections 434(b) (1), (2) and (4) of Title 2 of the United States Code require a political committee to report the amount of cash on hand at the beginning of each reporting period and the total amount of all receipts and disbursements for the reporting period and calendar year.

The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed the following misstatements:

Receipts

By summing the current period totals for each reporting period, it was determined that the Committee reported total receipts of \$449,711.85 for 1990.*/ The Audit staff's bank reconciliation determined that the Committee should have reported total receipts of \$431,511.79. Therefore, the Committee's reported receipts were overstated by a net amount of \$18,200.06.

*/ On its 1990 Year End Report the Committee reported calendar year to date receipts for 1990 of \$454,131.55. The difference is an apparent mathematical error within its 1990 Post-General Election report.

The Audit staff's analysis of Committee bank deposits by reporting period identified a significant discrepancy with respect to the 1990 Post-General Election report within which receipts were overstated by \$15,537.64. This resulted mainly from the inclusion of: a deposit (\$8,635) which had been included on the Pre-General Election report; and, a portion of a deposit (\$6,102.64) recorded by the Committee on 10/18/90 which was also included in its entirety on the Pre-General Election report. In the absence of workpapers which detail the preparation of its disclosure reports, the Audit staff was unable to explain the remaining differences.

Disbursements

The Committee reported total disbursements of \$448,376.76 for 1990.*/ The Audit staff's bank reconciliation determined that the Committee should have reported total disbursements of \$431,694.69. Therefore, the Committee's reported disbursements were overstated by a net amount of \$16,682.07. The Audit staff's analysis of Committee disbursements by reporting period indicated the largest discrepancies occurred with respect to the 1990 October Quarterly and Pre-General Election reports within which disbursements were overstated by \$6,198.83 and \$11,537.14 respectively. The difference (\$6,198.83) with respect to the October Quarterly report resulted mainly from the inclusion of disbursements from outside the reporting period (\$26,472.66), an apparent overstatement of unitemized disbursements (\$1,697.69) and an understatement with respect to reporting the amounts of two disbursements (\$21,531). In the absence of workpapers which detail the preparation of its disclosure reports, the Audit staff was unable to explain the remaining \$440.52 difference in the October Quarterly Election Report or any of the \$11,537.14 difference in the Pre-General Election report.

Ending Cash on Hand Balance

The Committee reported an ending cash on hand balance on December 31, 1990 of \$1,676.99. The Audit staff determined this was overstated by a net amount of \$1,507.77 which resulted from the misstatements detailed above. The correct ending balance was determined by the Audit staff to be \$169.22.

Copies of workpapers detailing the above noted differences were provided to Committee representatives at the exit conference.

In the interim audit report, the Audit staff recommended that, within 30 calendar days of service of that report, the

*/ On its 1990 Year End Report the Committee reported calendar year to date disbursements for 1990 totaling \$446,833.85. The difference is an apparent mathematical error within its 1990 Post General report.

Committee file amendments for calendar year 1990 correcting the misstatements of financial activity noted above.

The Committee responded and submitted documentation on January 30, February 10, March 10, and March 19, 1992 ("the response"). In its response to the interim audit report, the Committee provided amended disclosure reports that materially corrected the above noted misstatements.

Recommendation #1

The Audit staff recommends no further action with respect to this matter.

B. Failure to Itemize Contributions from Individuals

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report shall disclose the identification of each person 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 a 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.

The Audit staff's review of the available records for contributions from individuals indicated that a material number of these contributions were not itemized as required. Our analysis determined that the majority of contributions from individuals which were not itemized, related to the 1990 October Quarterly report. The Audit staff reviewed contributions from individuals within this time frame and noted that the Committee failed to itemize 33 contributions totaling \$20,650.

Committee representatives were provided with schedules of the contributions from individuals requiring itemization at the exit conference. A Committee representative stated that the Committee's computer had "crashed" twice and that was probably the reason for so many errors.

In the interim audit report, the Audit staff recommended that, within 30 calendar days of service of that report, the Committee file amended Schedules A (Itemized Receipts) for the 1990 October Quarterly report as part of a comprehensive amendment to disclose the contributions not itemized as noted above.

In its response to the interim audit report, the Committee submitted amended Schedules A which disclosed the above noted contributions.

Recommendation #2

The Audit staff recommends no further action with respect to this matter.

C. Itemization of Receipts from Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code states that each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13)(B) of Title 2 of the United States Code states the term "identification" means, in the case of any other person, the full name and address of such person. In addition, 2 U.S.C. §431(11) defines "person" to include an individual, partnership, association, corporation, labor organization or committee.

The Audit staff's review of the available records for contributions from political committees determined that the Committee failed to itemize 25 such contributions totaling \$18,550.

Committee representatives were provided with a schedule of the contributions at the exit conference. They stated that they had believed that the contributions had been reported, but agreed to file the necessary amended reports.

In the interim audit report, the Audit staff recommended that, within 30 calendar days of service of that report, the Committee file amended Schedules A (Itemized Receipts) by reporting period, as part of a comprehensive amendment, to disclose the contributions noted above.

In its response to the interim audit report, the Committee submitted Schedules A to amend its reports which materially disclosed the above noted contributions.

Recommendation #3

The Audit staff recommends no further action with respect to this matter.

D. Itemization of Disbursements

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose 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.

The Audit staff's review of those Committee disbursements required to be itemized indicated that 49 disbursements totaling \$43,634.63, were not itemized.

In addition, the Audit staff's review of itemized disbursements identified 29 disbursements totaling \$43,893.23, for which the proper disclosure information was either incomplete or omitted. Most of the errors resulted from either an incomplete address being disclosed or, no purpose, or an inadequate purpose being disclosed.

At the exit conference Committee representatives were made aware of the above problems and stated that they would amend their disclosure reports.

In the interim audit report, the Audit staff recommended that within 30 calendar days of service of that report, the Committee file amended Schedules B by reporting period as part of a comprehensive amendment to correct the disclosure of disbursements as noted above.

In its response to the interim audit report, the Committee submitted Schedules B to amend its reports which materially corrected the above noted disclosure problems.

Recommendation #4

The Audit staff recommends no further action with respect to this matter.

E. Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code, in part, requires each report filed under this section, by the treasurer of a political committee to disclose the amount and nature of outstanding debts and obligations owed by the Committee.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished. In addition, 11 C.F.R. §104.11(b) states, in part, that a debt which is \$500 or less shall be reported as of the time payment is made or no later than 60 days after such obligation is incurred and that any debt in excess of \$500 shall be reported as of the time of the transaction.

The Audit staff performed a review of all Committee disbursements to identify debts and obligations which required disclosure on Schedule D of reports filed by the Committee during

the audit period. The auditor's review indicated that reportable debts with respect to three vendors were understated by \$50,974.35 on disclosure reports filed for the latter half of 1990.

At the exit conference, Committee representatives were provided copies of the auditor's workpapers detailing these discrepancies. Committee representatives stated that they would amend their reports to properly disclose the above noted debts.

In the interim audit report, the Audit staff recommended that, within 30 calendar days service of that report, the Committee file amendments to correct the disclosure of debts on Schedule D and line 10 of the Summary Page by reporting period as part of a comprehensive amendment.

In its response to the interim audit report, the Committee submitted Schedules D to amend its reports which materially disclosed the debts and obligations noted above.

Recommendation #5

The Audit staff recommends no further action with respect to this matter.

F. Failure to Maintain Receipts Records

Sections 432(c)(1), (2), (3) and (d) of Title 2 of the United States Code state that the treasurer of a political committee shall keep an account of all contributions received by or on behalf of such political committee; the name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person; and, the identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 431(13) 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; and in the case of any other person, the full name and address of such person.

Section 431(8)(A)(i) of Title 2 of the United States Code states that the term "contribution" includes any gift, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

The Audit staff's analysis of Committee receipt records indicated that 13.6% of correct reportable receipts lacked

adequate documentation. Further, the Audit staff was able to identify 89 deposits totaling \$60,716.77 for which no records that identified the source of the funds were maintained. A significant number of these undocumented deposits occurred during the period January to April 17, 1990. This was the period during which the records were maintained by Maine-ly Marketing (a marketing firm hired by the Committee).

Further, the Audit staff reviewed available records and determined that 69% were externally generated (ie. copies of checks or response devices) and 31% were internally generated (ie. by a card file or computer listing). The incompleteness of the receipt records limited the extent of the testing the Audit staff was able to perform.

At the exit conference, Committee representatives were provided with a schedule listing the deposits for which receipts documentation was considered incomplete or unavailable.

Committee representatives stated that they would contact the bank and explore other possibilities for satisfying the documentation requirements for the receipts noted above.

In the interim audit report, the Audit staff recommended that, within 30 calendar days of service of that report, the Committee provide for the Audit staff's review, receipt documentation to fully support the deposits noted above.

The Audit staff also noted that, further recommendations may be forthcoming based on a review of the records provided.

In its response to the interim audit report the Committee stated that the anticipated cost of obtaining the documentation requested above is in excess of \$5,000. In addition, the Committee stated that faced with the \$36,000 worth of debt */ , the need to refund the excessive contributions, and no cash **/ ; it was not in a position to use the services of the bank, to obtain the documentation requested above. However, as part of its response, the Committee provided a contributor listing ("the list") detailing \$410,639.57 in receipts for the period 1989-1990.

In addition, the Committee provided contributor printouts, deposit batches and miscellaneous bank documentation.

The Audit staff's review of the list indicated that with respect to 1990, the list contained entries for receipts totaling \$401,839.57, which represents 93% of correct reportable receipts and appears to be materially complete. The Audit staff was able to reconcile the dollar total (\$401,839.57) of the list to the

*/ At year-end 1991, the Committee reported \$35,498.88 of debt.

**/ At year-end 1991, the Committee reported ending cash of \$77.65.



AMERICAN LEGION POST 1234

MEMBER LIST

NAME

ADDRESS

CITY

STATE

MEMBER NO.

AGE

REGISTRATION DATE

STATUS

CLASSIFICATION

DATE OF BIRTH

SEX

DATE OF DEATH

POST OFFICE

STATE

POST OFFICE

STATE