



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

AK006167

April 12, 1995

MEMORANDUM

TO: RON M. HARRIS, PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
HERSCHENSOHN FOR U.S. SENATE 1992

Attached please find a copy of the final audit report and related documents on Herschensohn for U.S. Senate 1992 which was approved by the Commission on April 3, 1995.

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

97070250035

97070250036

97070250037

**REPORT OF THE AUDIT DIVISION
ON**

Herschensohn for U.S. Senate 1992

Approved April 3, 1995



**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.**

97970250008

TABLE OF CONTENTS
HERSCHENSOHN FOR U.S. SENATE 1992

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	5
Transmittal to Committee	11
Chronology	13

970 / 0250019

970 / 0250000



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

FINAL AUDIT REPORT
ON
HERSCHENSOHN FOR U.S. SENATE 1992

EXECUTIVE SUMMARY

Herschensohn for U.S. Senate 1992 (the Committee) registered with the Secretary of the Senate on April 26, 1991, as the principal campaign committee for Bruce Herschensohn, Republican candidate for the U.S. Senate from the state of California.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states, that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the Committee at an exit conference held after the field work, on October 19, 1993, and later in an interim audit report. The Committee's responses to those findings are included in this final audit report.

The following is an overview of the findings contained in the final audit report.

Apparent Excessive Contributions - 2 U.S.C Section 441a(a)(1)A; 11 CFR Sections; 103.3(b)(3) and (4); 110.1(b)(5); 110.1(k); 110.1(l); and 110.2(b)(5). The Committee received contributions which exceeded the donor's limitations by \$130,964. The Committee took steps to resolve \$88,565 of this amount, through redesignations, reattributions and refunds, but failed to provide evidence that the corrective measures had been taken within the required time limits. As a result, the excessive contributions were considered to be untimely resolved. As to the remaining \$42,399, the Committee complied with an interim audit report recommendation by reporting the majority of the amounts as debts (since the Committee did not have the necessary funds to make immediate refunds). With respect to excessive contributions that had been refunded, the Committee provided copies of canceled refund checks as recommended in the interim audit report.

Itemization of Contributions - 2 U.S.C. Sections 434(b) & 431(13). The Committee did not itemize a material number of contributions for which itemization was required. The errors were

OFFICE OF THE COMMISSIONER OF FEDERAL ELECTIONS
YESTERDAY. TODAY. AND TOMORROW.
DEDICATED TO KEEPING THE PUBLIC INFORMED.

9797025001

the result of the Committee maintaining records of contributions on two separate data bases. In response to an interim audit report recommendation, the Committee filed comprehensive amendments which corrected the itemization errors.

Disclosure of Disbursements - 2 U.S.C. Section 434(b)(5) and 11 CFR 104.3(b)(3)(i)(A). In disclosure reports filed by the Committee, a material number of itemized disbursements were disclosed with inadequate statements describing why the disbursements had been made (i.e., the "purpose"). The Committee complied with an interim audit report recommendation by filing amended disclosure reports which provided adequate "purpose" descriptions.

48 Hour Notification of Contributions - 11 CFR Section 104.5(f). The Committee did not file 48-hour notices for 23 contributions totaling \$32,500. In response to the interim audit report, the Committee provided documentation showing that one notice was filed as required. However, the Committee failed to provide an explanation for its failure to file the other notices.

970/025002



REPORT OF THE AUDIT DIVISION
ON
HERSCHENSOHN FOR U.S. SENATE 1992

I. Background

A. Overview

This report is based on an audit of Herschensohn for U.S. Senate 1992 ("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 subsection, 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 audit covered the period from May 6, 1991, the date of the Committee's first recorded transaction, through December 31, 1992. The Committee reported a beginning cash balance of \$0; total receipts for the period of \$7,872,379 total disbursements for the period of \$7,859,077; and an ending cash balance of \$56,187 ^{1/}

B. Campaign Organization

The Committee registered with the Secretary of the Senate on April 26, 1991, as the principal campaign committee for Bruce Herschensohn, Republican candidate for the U.S. Senate from the state of California. The Committee maintained its headquarters in Irvine, California.

^{1/} These amounts represent calendar year to date totals reported on disclosure report summary pages. The amounts do not foot due to mathematical errors on the Committee's disclosure reports. The amounts as disclosed by report period total \$7,915,263 for receipts and \$7,859,077 for disbursements; and an ending cash balance of \$56,186.

9797025003

The audit indicated that the Committee was financed primarily through contributions from individuals (\$6,812,908), contributions from Political Party Committees (\$20,678), contributions from Other Political Committees (\$627,159), and loans from the candidate (\$300,000).

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 matters in the report and were available to the Commissioners and appropriate staff for review.

C. Key Personnel

The Treasurer of the Committee during the period covered by the audit was Ms. Betty Presley.

D. Scope

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.B.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.C.);
5. proper disclosure of campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping for campaign transactions; and
8. other audit procedures that were deemed necessary in the situation.

970 / 02500 / 4

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. Audit Findings and Recommendations

A. Apparent Excessive Contributions

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office, which in the aggregate exceed \$1,000.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.

If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limitations set forth in 11 CFR 110.1 and 110.2 when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contributions are deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

979700250015

Sections 110.1(1)(2)(3) and (5) of Title 11 of the Code of Federal Regulations state that if a political committee receives a written redesignation of a contribution to a different election, the treasurer shall retain the written redesignation provided by the contributor, as required by 11 CFR 110.1(b)(5) or 110.2(b)(5), as appropriate.

If a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor, as required by 11 CFR 110.1(k).

If a political committee does not retain the written records concerning redesignation or reattribution required under 11 CFR 110.1(1)(1),(2),(3) or (6), the redesignation or reattribution shall not be effective and the original designation or attribution shall control.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

The Committee's receipt records consisted of copies of contributor checks in deposit order and two computerized data bases. One data base was maintained by the Committee for contributions received at Committee headquarters. The other data base was maintained by a direct mail firm and contained contributions solicited through a direct mail program. During the audit field work the two data bases were merged.

The Audit staff's testing of the merged data and copies of contributor checks maintained by the Committee and the direct mail firm identified 200 contributors who exceeded their contribution limitations by a total of \$130,964. The Audit staff could find no evidence that the Committee had taken any action regarding \$42,399 of this amount. With regard to the remaining \$88,565, the Committee attempted to either reattribute and/or redesignate the contributions by contacting the contributors by letter or refunding the excessive portions of the contributions to the contributor. Refunds totaling \$22,700 were identified by the Audit staff, however, at the time of fieldwork, for the majority of the refunds the only record available was the Committee's check register.

The Audit staff reviewed copies of the letters sent to and/or returned by the contributors and determined that the majority of the responses were not receipt dated by the Committee nor did the Committee retain the return envelopes. Therefore the

Audit staff was unable to determine whether the reattribution/redesignation letters were received timely as required under 11 CFR \$110.1(b)(5) and 110.1(k)(3). A review of the check register was also performed to determine whether the refunds were made timely. In the absence of evidence of a timely reattribution/redesignation or refund, the excessive contributions were considered untimely resolved.

In the interim audit report the Audit Staff recommended that the Committee take the following action:

- ° Refund to the contributors the \$42,399 for which the Committee had taken no action and present evidence of the refunds (copies of the front and back of the negotiated refund checks);
- ° if funds are not available to make such refunds, disclose the required information relative to the excessive contributions as debts owed by the Committee on Schedule D;
- ° the Committee should also provide copies of the negotiated refund checks (front and back) for the \$22,700 in excessive contributions which were previously refunded.

In response to the interim audit report, regarding the \$42,399 in unresolved excessive contributions, the Committee disclosed \$31,908 as debts owed to the contributors. In addition seven copies of cancelled refund checks were provided for an additional \$3,780 in refunds, however all of the refunds were made untimely. The Committee also provided documentation to verify that a \$300 contribution attributed to an individual was actually a partnership contribution which should have been allocated to other partners. The Audit staff did not accept documentation provided by the Committee to support reattributions of three contributions totalling \$1,511 because the documentation did not provide evidence of a timely reattribution/redesignation. Finally \$4,900 in excessive contributions were not disclosed as debts nor were copies of refund checks provided.

Regarding the \$22,700 previously refunded, the Committee provided copies of cancelled refund checks for \$21,750 and voided \$950 in refund checks. The amounts of the refund checks which were voided were reported on Schedules D as debts owed to the contributors.

B. Itemization of Contributions

Section 434(b)(3) of Title 2 of the United States Code states that each report, filed by a committee, shall disclose 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

970/025007

aggregate amount or value in excess of \$200 within the calendar year, or any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code defines identification in the case of any individual, as 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 testing of a sample of the Committee's contributions identified material problems regarding the itemization of contributor information.

An analysis of the sample errors indicated that the errors were the result of the Committee's direct mail firm maintaining contributions on a separate receipts data base which were not properly aggregated with the contributions on the Committee's receipts data base.

Committee officials were informed by the Audit staff of the itemization problems and stated that amended reports would be filed.

In the interim audit report the Audit staff recommended that the Committee file comprehensive amendments for calendar years 1991 and 1992 to correct the itemization errors noted above.

In response to the interim report, the Committee filed a comprehensive amendment which corrected the itemization errors.

C. Disclosure of Disbursements Information

Section 434(b)(5) of Title 2 of the United States Code requires a political committee to 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.

Section 104.3(b)(3)(i)(A) of Title 11 of the Code of Federal Regulations states that "purpose" means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(3) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

The Audit staff tested a sample of Committee

9707025008

disbursements and found that a material number contained inadequate purposes. In most cases a purpose was included on the disclosure reports; however, vague descriptions such as "election event," "event cost," and "Hq and support" were used. At the exit conference, the Audit staff provided Committee representatives with examples of the inadequate purposes.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules B to correct/clarify the purposes of the disbursements.

In response to the audit report, the Committee filed a comprehensive amendment which materially corrected the disclosure errors.

D. 48 Hour Notification of Contributions

Section 104.5(f) of Title 11 of the Code of Federal Regulations states, in part, if any contribution of \$1,000 or more is received by any authorized committee of a Senate candidate after the 20th day, but more than 48 hours before 12:01 a.m. of the day of the election the principal campaign committee of that candidate shall notify the Secretary of the Senate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought, the identification of the contributor and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

The California Senate Republican primary elections were held on June 2, 1992, and the General election was held on November 3, 1992. Therefore, the Committee was required to notify the Secretary of the Senate of any contributions of \$1,000 or more received from May 14, 1992 through May 30, 1992 and from October 15, 1992 through October 31, 1992, within 48 hours of receipt.

The Audit staff reviewed the Committee's receipt records and determined that the Committee did not file the required notices for 23 contributions totaling \$32,500 received for the Primary and General elections. Of this amount, five contributions, totaling \$6,500, were received between May 14, 1992 and May 30, 1992; and 18 contributions totaling \$26,000 were received between October 15, 1992 and October 31, 1992.

Committee representatives were provided a schedule of the contributions subject to the 48 hour notice at the exit conference.

In the interim audit report the Audit staff recommended that the Committee provide evidence which demonstrates that it complied with 11 CFR 104.5(f) or any other comments or explanation regarding the failure to file the required notices.

In response to the interim audit report, the Committee provided documentation to verify that one contribution had been timely reported. In addition the Committee provided a copy of a page of a memorandum addressed to the Office of the Secretary of the Senate which listed three additional contributions, however according to documentation on file at the Secretary's Office, it does not appear that the page was received. The Committee provided no explanation as to why the remaining contributions were not timely reported.

97070250110



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK006124

April 5, 1995

Ms. Betty Presley, Treasurer
Herschensohn for U.S. Senate 1992
1251 E. Dyer Road, Suite 100
Santa Ana, CA 92705

Dear Ms. Presley:

Attached please find the Final Audit Report on Herschensohn for U.S. Senate 1992. The Commission approved the report on April 3, 1995.

The Commission approved Final Audit Report will be placed on the public record on April 12, 1995. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions you have related to matters covered during the audit or in the report should be directed to Ray Lisi of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

Celebrating the Commission's 20th Anniversary
YESTERDAY TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

07070259101

97070250102

CHRONOLOGY

HERSCHENSOHN FOR U.S. SENATE 1992

Audit Fieldwork	9/14/93 - 10/19/93
Interim Audit Report to the Committee	10/13/94
Response Received to the Interim Audit Report	12/20/94
Final Audit Report Approved	4/3/95

97970250103

970 / 0250104

970/0250105

