



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
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REPORT OF THE AUDIT DIVISION ON THE COMITE' AMIGOS DE JAIME BENITEZ

I. Background

A. Overview

This report is based on an audit of the Comite' Amigos de Jaime Benitez ("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 Federal Election Commission on April 5, 1976 in support of Jaime Benitez for election to the office of Resident Commissioner of Puerto Rico. On April 5, 1976, the Committee was designated by the Candidate as his principal campaign committee for the 1976 election. The Committee maintains its headquarters in San Juan, Puerto Rico.

The audit covered the period from June 8, 1976 through September 30, 1977. During this period the Committee reported a beginning cash balance of \$-0-, total receipts of \$29,678.38, total expenditures of \$24,405.25 and a closing cash balance on December 31, 1976 of \$5,273.13. 1/

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 failed to file FEC Form 3a covering the period January 1, 1977 through March 31, 1977, (see Finding J.). In addition, due to reporting errors as detailed in Findings B and G, reported totals were significantly misstated.



B. Key Personnel

The principal officers of the Committee were Dr. Victor Gutierrez, Chairman, and Mr. Jose Alegria, Treasurer.

C. Scope

Except as set forth in Findings A and B, 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

Based on the examination of disclosure reports and records presented, it is the opinion of the Audit staff that the Comite' Amigos de Jamie Benitez has not conducted its activities in compliance with the Federal Election Campaign Act of 1971, as amended, in certain material aspects noted below; and as noted in the preceding paragraph, the scope of our work was not sufficient to enable us to express an opinion on the representations contained in the Committee's disclosure reports for the audit period.

A. Recordkeeping for Receipts

Section 432(c)(1) and (2) of Title 2, United States Code, states that the treasurer of a political committee shall keep a detailed and exact account of all contributions made to or for such committee, to include the identification of every person making a contribution in excess of \$50 with the date and amount thereof, and, if a person's contributions aggregate in excess of \$100 during a calendar year, the account shall include occupation and the principal place of business (if any).

Section 104.12(b) of Title 11, Code of Federal Regulations, requires, in part, that each political committee required to file reports under the Act shall: 1) maintain records with respect to the matters reported, including vouchers, worksheets, receipts, bills and accounts which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified; and 2) keep those records available for audit or inspection by the Commission or its authorized representatives for a period of not less than three (3) years.

During our audit we examined the Committee's receipt records, covering the period June 8, 1976 to October 30, 1976, which consisted of listings of the contributors' names and the amounts and dates of the contributions. Receipt records could not be located for the period November 1 - December 31, 1976. A comparison was made between available receipt records and total reportable receipts shown in the bank records from June 8, 1976, through September 30, 1977. According to the Committee's bank records, receipts totalled \$37,812.99. However, available contributor records totalled only \$22,677.99, thus leaving a total of \$15,135 of receipts which were undocumented (40.03% of total receipts).

In addition, our review of the Committee's bank records revealed two (2) large cash deposits during the week just prior to the general election, as follows:

<u>DATE PER DEPOSIT TICKET</u>	<u>CASH</u>	<u>CHECKS</u>	<u>TOTAL DEPOSIT</u>
10/27/76	\$6,380.00	-0-	\$6,380.00
11/3/76*	\$5,110.00	\$1,550.00	\$6,660.00

* This deposit was reflected on the bank statement at October 29, 1976.

The Committee also failed to retain deposit receipts for four (4) deposits (July 28, September 17, October 6 and November 26, 1976), totalling \$17,440.00.

It is the opinion of the Audit staff that these two (2) large deposits, and the bank deposit of \$1,805 on November 26, 1976 (the only bank credit for the period November 1 - December 31, 1976), which total \$14,845, represent the bulk of the \$15,135 of receipts for which the Committee apparently maintained no records.

When questioned, the Treasurer was not able to identify the source of the large cash deposits or to explain the large overall discrepancy in receipt records. The Treasurer was also unsure whether or not the contributors of these funds were included in the contributor lists reviewed by the Audit staff for the period ending October 30, 1976.

In our letter of March 10, 1978, we recommended that the Committee and/or the Candidate make a reasonable effort to identify the sources of the unsupported contributions and furnish either copies of the documentation obtained or evidence of their efforts to obtain the documentation to the Audit staff for review, within 30 days of notification. No response was received from either the Committee or the Candidate and in a telephone conversation on April 18, 1978, the Treasurer was indefinite as to when he would be submitting the requested documentation. Due to the lack of response and prospects for any response, this finding was referred to the Office of General Counsel on April 25, 1978.

B. Reporting of Receipts

Section 434(b)(2) through (8) of Title 2, United States Code, requires reports filed under the Act to contain certain information with respect to receipts, including the total sum of individual contributions not otherwise itemized, the itemization of certain other types of receipts, and the total sum of all receipts made by or for the committee during the reporting period.

During the course of our audit, an examination of the Committee's bank records revealed a total of \$18,088.28 ^{2/} in receipts which the Committee did not report. This represents 47.84% of the Committee's total reportable receipts. Because of the recordkeeping problem discussed in Finding A, \$15,135.00 of these unreported receipts remain unidentified as to their source. It is the opinion of the Audit staff that, based on our review of the available records, the balance of the unreported receipts (\$2,953.28) ^{2/} is comprised of contributions from individuals.

Our audit also revealed that the Committee reported, and included in its receipt totals, general election expenditures made on its behalf by the State Popular Democratic Party totalling \$9,953.67 which were not required to be reported by the Committee.

^{2/} Of this amount, \$500 that was itemized by the Committee on Schedule A was not included in its receipt totals.

We recommended that the Committee file a comprehensive amendment for 1976 reflecting an adjustment in Committee receipts for the period of \$8,134.61. On February 1, 1978, we received the Committee's 1976 comprehensive amendment which reflected the correct summary page total for receipts.

In our letter to the Committee of March 10, 1978, we recommended that the Committee file a supplementary amendment, itemizing where necessary the undocumented receipts discussed in Finding A for which records were obtained. Because of the lack of response from the Committee and Candidate to our request for records made for Finding A, this finding was referred to the Office of General Counsel on April 25, 1978.

C. Apparent Corporate Contributions

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

During the course of our audit, we determined that the Committee had received four (4) apparent corporate contributions totalling \$310. The corporate status of these business entities was confirmed with the Secretary of State's Office, San Juan, Puerto Rico, during the audit. The Treasurer stated he was unaware that the Committee had accepted any corporate contributions and felt that these had been accepted due to clerical oversight.

In our letter to the Committee of March 10, 1978, we recommended that the Committee refund these contributions to the parties involved and furnish documentation of the refunds to the Audit staff within 30 days of notification. Because of the lack of response from the Committee to this recommendation, and in accordance with established Commission policy, this finding was also referred to the Office of General Counsel on April 25, 1978.

D. Reporting of Committee Activity Under Candidate's Name

Sections 434(a)(1) and (b) of Title 2, United States Code, require political committees supporting candidate(s), and each candidate for election to Federal office, to file with the Commission reports containing information on their receipts, expenditures, and beginning and ending cash.

During the course of our audit it was determined that the Committee's receipt and expenditure activity, except for \$50 in receipts, had been reported to the Commission on reports reflecting only the Candidate's name. In discussions with the Treasurer it was determined that the Candidate raised and spent no funds himself, and that all campaign-related activity occurred through the Committee. Information on Committee receipt and expenditure activity was sent to the Resident Commissioner's office in Washington where the FEC reports were prepared and filed under the Candidate's name.

We recommended that the Committee and the Candidate submit comprehensive amendments for 1976 transferring all campaign activity from Candidate reports to reports properly reflecting the activity under the name of the Committee. On February 1, 1978, we received comprehensive amendments from the Candidate and the Committee correctly reflecting the transfer of receipt and expenditure activity totals from the Candidate to the Committee.

Recommendation

Because the Committee has satisfactorily complied with our recommendation, no further action on this finding is recommended.

E. Reporting of Debts and Obligations

Section 434(b)(12) of Title 2, United States Code, states that reports filed by political committees shall disclose the amount and nature of debts and obligations owed by the committee, and requires that these debts and obligations be continuously reported until extinguished, together with a statement of circumstances under which they were extinguished.

Section 104.8(b) of Title 11, Code of Federal Regulations, requires in part, that a debt, obligation, or other promise to pay in excess of \$500 be reported as of the time of the transaction.

Our examination of Committee records revealed an undisclosed obligation to the Committee's media firm which attained reportable status as of July 31, 1976, and which required continuous reporting through the year-end 1976 report at which time the balance owed was \$7,943.83. Since that time, the Committee has made no additional payments on this obligation. At no time during this period did the Committee or the Candidate disclose this obligation in reports to the Commission. The Treasurer indicated this omission was due to a misunderstanding of the reporting requirements for debts and obligations.

On February 1, 1978, the Committee filed a report (as of September 30, 1977) disclosing the obligation on Schedule C as required. In our letter to the Committee of March 10, 1978, we recommended that the Committee, within 30 days of notification, file a comprehensive amendment for 1976 to include the appropriate Schedule C, disclosing the total obligation, payments to date, and balance outstanding on the above-mentioned obligation. Furthermore, the Committee was advised that it must continue to file reports until the debt is extinguished (in accordance with Section 434(b)(12) of Title 2 of the United States Code), and that any settlement of the obligation with the corporate vendor at less than the value of the services is subject to Commission review, (per Section 114.10(c)(3) of Title 11, Code of Federal Regulations).

Recommendation

To date the Committee has not disclosed the debt as required in its 1976 comprehensive amendment. However, since the existence of the debt has been disclosed in the report filed for the period ending September 30, 1977, we recommend no further action in this matter.

F. Itemization of Contributions

Section 434(b)(2) of Title 2, United States Code, requires a committee to include in its reports the full name and address, occupation and principal place of business of each person making a contribution(s) in excess of or aggregating in excess of \$100 within a calendar year, together with the amount and date of such contribution(s).

Our review of the Committee's available receipt records revealed nine (9) contributions from as many contributors in excess of \$100 or aggregating in excess of \$100 which were not itemized by the Committee as required in its reports. These contributions ranged in amount from \$50 to \$500 and totalled \$1,400. The Treasurer attributed these omissions to clerical oversight in the preparation of the reports.

In addition, of the 31 contributions itemized on the Candidate's reports:

- a) 3 contributions (9.67%) failed to reflect an address,
- b) 11 contributions (35.48%) failed to reflect the individual's occupation,

- c) 19 contributions (61.29%) failed to reflect the individual's principal place of business.

We recommended that the Committee file a comprehensive amendment for 1976 itemizing the previously omitted contributions, and reflecting the omitted address, occupation, and principal place of business information for those itemized contributions noted above. On February 1, 1978, we received the Committee's comprehensive amendment which materially complied with our recommendation.

Recommendation

Because the Committee has satisfactorily complied in this matter, no further action is recommended.

G. Reporting and Itemization of Expenditures

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

During the course of the audit, our examination of the Committee's expenditures revealed 12 expenditures in excess of \$100 which the Committee neither itemized as required, nor included in its total reported expenditures. These 12 expenditures (36.36% of the total number of itemizable expenditures) ranged in amount from \$411 to \$3,000 and totalled \$13,146 (35.13% of total itemizable expenditures). The Treasurer attributed these omissions to a lack of co-ordination between the campaign office in San Juan and the Resident Commissioner's office in Washington where the FEC reports were prepared.

We recommended that the Committee file a 1976 comprehensive amendment itemizing these previously omitted expenditures and adjusting its year-to-date totals accordingly. On February 1, 1978, the Committee filed its comprehensive amendment for 1976 including the expenditures noted above.

Recommendation

Because the Committee has satisfactorily complied in this matter, no further action is recommended.

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H. Disclosure of Committee Depository

Section 433(b)(9) of Title 2, United States Code, requires that a committee reveal in its statement of organization a listing of all banks, safety deposit boxes, or other repositories used by the committee.

Our review of the Committee's bank records revealed the use of a depository which was not reported as required by the Committee on its Statement of Organization, in any amendments submitted thereto, nor on the Statement of Candidate. Furthermore, the depository disclosed by the Candidate on his Statement of Candidacy and the Committee in its Statement of Organization was never used by the Committee during the period under audit.

In our letter to the Committee of March 10, 1978, we recommended that the Committee file an amended Statement of Organization disclosing the depository used within 30 days of notification. We also recommended that the Candidate file an amended Statement of Candidacy designating the account as the Committee depository. Because of the lack of response to our recommendation on this finding, this matter was included in the referral to the Office of General Counsel on April 25, 1978.

I. Disclosure of Fundraising Activity

Section 434(b)(6)(A) and (B) of Title 2, United States Code, requires that reports filed by committees under the Act shall disclose the total amount of proceeds from the sale of tickets to each dinner, rally, and other fundraising event, and mass collections made at such events.

During the course of our audit, it was determined that a major fundraising banquet was held by the Committee in September 1976, at the Caribe Hilton, San Juan, which was not disclosed by the Committee as required on Schedule D. The Treasurer stated that a deposit of \$12,410 made to the Committee's account on September 17, 1976, represented the bulk of proceeds collected from the dinner.

We recommended that the Committee file its 1976 comprehensive amendment to include the appropriate Schedule D disclosing the total of proceeds from the fundraising activity referred to above. On February 1, 1978, the Committee filed its 1976 comprehensive amendment disclosing the fundraiser as recommended.

Recommendation

Because the Committee has complied in this matter, no further action is recommended.

J. Filing of Reports in Non-Election Year

Sections 104.1(a), (c)(2) and (c)(3)(i) of Title 11, Code of Federal Regulations, require each political committee to file quarterly reports of contributions and expenditures until all debts and obligations relating to that committee's Federal election activity are extinguished and the committee has filed a valid Notice of Termination. In any non-election year such committee shall only be required to file quarterly reports for a calendar quarter during which contributions received or expenditures made, when added together, exceed \$5,000. If the level of activity does not exceed \$5,000 per calendar quarter, the political committee shall notify the Commission on FEC Form 3a, or by letter containing the same information, at the close of the first quarter in which the exemption applies.

Our review of the Committee's reports filed with the Commission revealed no FEC Form 3a or letter equivalent filed by the Committee for the first quarter 1977. Bank records for the period indicated \$9.00 of expenditure activity and no receipt activity.

The Committee was formally notified of this finding in a letter dated March 10, 1978, in which it was recommended that the Committee file the omitted FEC Form 3a for the first quarter of 1977, within 30 days of notification. Because of the Committee's failure to respond to our recommendation this finding was referred to the Office of General Counsel on April 25, 1978.

K. Other Matters

Presented below is a matter for which the Audit staff recommended no further action:

Our examination of the Committee's solicitation literature consisting of a mass mailing letter and a newspaper ad solicitation, revealed that neither contained the notification required by Section 435(b) of Title 2 of the United States Code. The Committee was advised of the required notification for all solicitation literature in accordance with this section of the Act.

Summary

Due to the lack of response to our recommendations in Findings A, B, C, H and J, the matters contained therein were referred to the Commission's Office of General Counsel on April 25, 1978, and combined with other matters in MUR 505(78) regarding the Committee.

On August 21, 1978, acting upon the recommendation of the Office of General Counsel, the Commission found reasonable cause to believe that the Committee had violated those sections of the Act pertaining to the Findings cited in the previous paragraph. Efforts were begun at that time to obtain a conciliation agreement with the Committee, which provided for a civil penalty of \$4,500. During the conciliation period the Committee submitted (on September 11, 1978), documentation which materially complied with the requirements of the Act regarding Findings C, H & J. Regarding the recordkeeping and reporting of receipts discussed in Findings A & B, at a meeting on October 12, 1978, with Commission staff, the Committee Treasurer agreed to provide records for the subject receipts. In subsequent telephone calls with the General Counsel's staff, he also indicated efforts were underway to raise funds to pay the Committee's 1976 campaign debt (to enable them to terminate their reporting obligation) and to pay the civil penalty provided for in the conciliation agreement.

However, subsequently no documentation regarding any fundraising event or further efforts to reach conciliation was received from the Committee. Therefore, based on the recommendation of the Office of General Counsel, the Commission voted on January 10, 1979, by 6-0, to find probable cause to believe that the Comite' Amigos de Jaime Benitez violated:

- 1) 2 U.S.C. 432(c)(1) and (2), and 434(b)(2)-(8) by failing to adequately report and keep records of receipts;
- 2) 2 U.S.C. 441b(a) by accepting illegal corporate contributions;
- 3) 2 U.S.C. 433(b)(9) by failing to disclose the Committee depository as required;

4) 2 U.S.C. 435(b) by failing to include the required notification for solicitation literature; and

5) 2 U.S.C. 434(a)(1) by failing to file the 1977 Quarterly and Year End Reports and April 10, 1978, Quarterly Report.

Furthermore, the Commission also on the same date authorized the General Counsel to institute civil suit with respect to the items noted above.

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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 # 505.
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.



