



FEDERAL ELECTION COMMISSION

AK004654

February 8, 1994

MEMORANDUM

TO: SHARON SNYDER
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
KEN BELL FOR CONGRESS COMMITTEE

Attached please find a copy of the final audit report on Ken Bell for Congress Committee which was approved by the Commission on February 1, 1994.

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

REPORT OF THE AUDIT DIVISION
ON KEN BELL FOR CONGRESS COMMITTEEI. BackgroundA. Overview

This report is based on an audit of Ken Bell for Congress Committee (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 Office of the Clerk, United States House of Representatives on February 22, 1990 and maintains its headquarters in Winston-Salem, North Carolina. The audit covered the period January 1, 1990 to December 31, 1990. The Committee reported an opening cash balance of \$0, total receipts of \$178,202.67, total disbursements of \$174,576.96 and a closing cash balance on December 31, 1990, of \$3,625.71.

This report is based on documents and workpapers supporting each of its factual statements. The documents and workpapers 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.

B. Key Personnel

The Treasurer of the Committee during the audit period was Mr. Mark N. Poovey. The current Treasurer of the committee is also Mark N. Poovey.

C. Scope

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

Although the Committee generally satisfied the minimum recordkeeping requirements set forth at 11 C.F.R. §102.9, the lack of vendor generated documents (i.e., invoices, receipted bills, etc.) precluded substantive testing of disbursements, and debts and obligations.

II. Audit Findings and Recommendations

A. Loans from the Candidate

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 authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

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

Sections 100.7(a)(1)(i)(A) and (B) of Title 11 of the Code of Federal Regulations state that, "A loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution."

Section 110.10(a) of Title 11 of the Code of Federal Regulations states, in part, that a candidate for Federal office may make unlimited expenditures from personal funds.

Section 110.10(b) of Title 11 of the Code of Federal Regulations defines "personal funds", in part, as any assets which under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either 1) legal

and rightful title or 2) an equitable interest. A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

Section 100.7(a)(1)(i)(D) of Title 11 of the Code of Federal Regulations states that, " A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign."

Section 100.7(b)(11) of Title 11 of the Code of Federal Regulations states, in part, that a loan of money by a State bank, a federally chartered depository institution, (including a national bank) is not a contribution if such loan is made in the ordinary course of business. A loan will be deemed made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of the loan involved; is made on a basis that assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule.

The Candidate made 14 loans to the Committee totaling \$44,675.97. The loans were drawn on the joint personal checking accounts of the Candidate and his spouse, except one for \$5,000, for which the Candidate obtained a personal loan.

Documents examined by the Audit staff received in January, 1992, after the completion of fieldwork, indicate that four of the loans totaling \$19,105, were made from an equity account which (according to the Candidate) was secured by the equity in the Candidate's home. Since the Candidate and his spouse are joint account holders, the Candidate was asked to provide documentation that the loans were made using his personal funds.

The Candidate provided a notarized statement which details the dates, amounts, sources (checking account and check number) of the loans and photocopies of statements from the joint checking accounts showing payment of each loan check.

The Audit staff examined the personal checking account statements of the Candidate for the months 1/90, 3/90 through 8/90 and 10/90, and noted the following:

- Savings account activity included on the statements of the personal checking account indicated that transfers in the amount of \$13,550 were made from the savings account to the personal checking account. One transfer of \$6500 was transferred to the personal checking account on the same date a loan for that amount was made to the campaign;
- Deposits into the personal checking account in the amount of \$18,600 are from what appears to be a mutual fund account. The deposits were made within one to two days of three loans made by the Candidate;
- Seven deposits totaling \$800 are identified as "Transfer from Instant Cash Reserve";
- One deposit of \$1,775.58 is from an apparent payroll deposit;
- The source of deposits in the amount of \$60,998.47, into the personal checking account is unknown.

The documents submitted by the Candidate as described above did not establish the Candidate's ownership over the funds used to make the loans. Absent such a showing, it was the opinion of the Audit staff that a portion of the loans made to the Committee may be loans in excess of the limitation from the Candidate's spouse. Since the Audit staff did not have access to the complete bank records (such as check registers for determining account balances on the dates on which the loans were made), we were unable to determine the extent to which the contribution limitation was exceeded.

In the interim audit report the Audit staff recommended that the Committee submit the following documents:

From the Prime Equity Line Account:

- loan application;
- loan agreement(s) and/or agreements establishing the lending limit;
- deed for property used to secure the loan;
- appraisal of property used to secure the loan;
- account statements from inception to 12/31/90 (excluding those already presented);

- check register for the account, or a schedule showing check numbers, payees, dates and amounts for checks written from the account's inception through number 112;
- source of payments and copies of all instruments applied against the equity line.

From the Personal Checking account:

- all account agreements and applications used to open or establish the account;
- all account statements from January 1, 1990 through December 31, 1990 (excluding those statements already presented);
- check register showing daily account balance;
- a description of the source of the deposits.

From the Savings account and Mutual Fund account:

- all account agreements and applications used to open or establish the accounts;
- all account statements from January 1, 1990 through December 31, 1990 from what appears to be a mutual fund account;
- a description of the source of each deposit made into the savings account and the mutual fund account.

In response to the interim audit report, the Candidate submitted documents which provided evidence that the loans made to the Committee were made from the candidate's personal funds.

Recommendation #1

The Audit staff recommends no further action.

B. Other Matters

Other matters noted during the audit have been referred to the Commission's Office of General Counsel.