



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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February 22, 1996

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
MINNESOTA DEMOCRATIC FARMER LABOR PARTY

Attached please find a copy of the final audit report and related documents on Minnesota Democratic Farmer Labor Party which was approved by the Commission on February 12, 1996.

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**

**Minnesota Democratic Farmer Labor
Party**

Approved February 12, 1996



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

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FINAL AUDIT REPORT
ON
MINNESOTA DEMOCRATIC FARMER LABOR PARTY
= EXECUTIVE SUMMARY

The Committee registered with the Comptroller General of the United States on July 15, 1975, as the State committee of the Minnesota Democratic-Farmer-Labor State Party.

The audit was conducted pursuant to 2 U.S.C. §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 audit fieldwork (4/15/94) and later in an interim audit report. The Committee's responses have been included in the findings set forth in the final audit report.

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

Misstatement of Financial Activity-(Non-Federal Portion)

2 U.S.C. 434(b)(1), (2) and (4); 11 CFR 102.5(a)(1)(i) and 106.5(g)(1). The Committee did not disclose 23 payments, totaling \$25,761, made from its non-federal account for shared federal/non-federal expenses; nor did it handle these transactions in accordance with the regulations governing the allocation of shared expenses. Amendments were filed in response to the interim report to complete the public record.

Reporting of Receipts

2 U.S.C. 434(b)(3)(A) and (B). Approximately 76% of the dollar value of contributions from individuals itemized on reports lacked required contributor information. Most of the errors involved instances where no street address was disclosed and/or the name of the contributor was incorrect. Amendments were filed which corrected these irregularities.

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Regarding contributions received from political committees/organizations, approximately 50% of the dollar value of contributions itemized on reports lacked complete address information and/or correct aggregate year-to-date figures. The Committee filed amended reports which materially corrected these errors.

Reporting of Disbursements

2 U.S.C. 434(b)(5)(A); 11 CFR 104.10(b)(3) and (4). Material error rates were identified regarding the Committee's reporting of payee addresses and the purpose of disbursements, as well as the identity of the non-federal bank account which funded certain allocable expenses. Amended reports were filed which materially corrected these irregularities.

The Committee failed to itemize approximately 2,200 entries related to Committee payroll transactions. The Committee disclosed the amounts transferred to its payroll account but did not disclose payee information for the checks issued from its payroll account. The Committee filed amendments which materially corrected these omissions.

Expenditures Made on Behalf of Clinton/Gore

2 U.S.C. 441a(d)(1); 11 CFR 100.8(b)(16)(i),(iv) and 110.7(a)(1)-(4). Disbursements totaling \$44,369 appeared to have been made on behalf of the Clinton/Gore general election committee, based on records made available during audit fieldwork. Items such as pins, T-shirts, hats and other campaign paraphernalia were purchased. No documentation was made available during audit fieldwork to demonstrate that the materials were used for exempt activities, as maintained by the Committee.

In response to the interim report, the Committee provided documentation which demonstrated that the expenses in question were for exempt activities rather than expenditures made on behalf of Clinton/Gore.

Apparent Excessive In-Kind Contribution From a Political Committee

2 U.S.C. 441a(a)(1)(C). The Committee entered into an agreement with Friends of Sikorski (FOS) whereby six FOS employees were loaned to the Committee to perform professional and administrative services under the exclusive direction of the Committee's political director. Information made available during audit fieldwork was not sufficient to determine whether or not the Committee reimbursed FOS for the full cost of the services. It appeared that the Committee had received some free services, resulting in a \$2,539 excessive contribution from FOS.

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Based on the Committee's response to this finding --and given that the amount in question could be characterized as a disputed debt that had been resolved -- no further action was warranted.

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REPORT OF THE AUDIT DIVISION
ON
MINNESOTA DEMOCRATIC FARMER LABOR PARTY

I. Background

A. Audit Authority

This report is based on an audit of the Minnesota Democratic Farmer Labor Party (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 the 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.

B. Audit Coverage

The audit covered the period from January 1, 1991 through December 31, 1992. The Committee reported a beginning cash balance at January 1, 1991 of \$2,645; total receipts for the period of \$3,361,375; total disbursements for the period of \$3,334,487; and an ending cash balance on December 31, 1992 of \$29,433.1^{1/}

C. Campaign Organization

The Minnesota Dollars for Democrats registered with the Comptroller General of the United States on July 15, 1975, as the State committee of the Minnesota Democratic-Farmer-Labor State Party. In 1980, the Committee filed an amended Statement of

^{1/} All figures in this report have been rounded to the nearest dollar. The amounts do not foot due to a \$100 reporting error in the beginning cash at January 1, 1992.

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Organization changing its name to the Minnesota Democratic-Farmer-Labor State Party.^{2/} The Committee maintains its headquarters in Saint Paul, Minnesota.

The Treasurer of the Committee during the period covered by the audit was Mr. William J. Davis. The current Treasurer of the Committee is Mr. Paul K. Schulte. Mr. Schulte became Treasurer on July 18, 1994.

To handle its federal financial activity, the Committee used eight bank accounts during this period. The Committee received contributions from individuals, political party committees and other political committees, as well as transfers from its non-federal accounts for shared expenses.

D. Audit Scope and Procedures

The audit covered the following general categories, however, the scope of our testing regarding contributions received from individuals was limited. Although in maintaining its contribution records, the Committee satisfied the recordkeeping requirements of 11 CFR §102.9, the records were not maintained in a manner which would have allowed the Audit staff to perform the substantive testing normally undertaken when reviewing this category of contributions (see Finding II.B.1.).

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.E.);
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. review of expenditures made on behalf of federal candidates (see Finding II.A.);
6. proper disclosure of Committee debts and obligations;

^{2/} On July 18, 1994, an amended Statement of Organization was received by the Federal Election Commission changing the Committee's name to the Minnesota Democratic Farmer Labor Party.

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7. accuracy of total reported receipts, disbursements and cash balances as compared to Committee bank records (see Finding II.D.);
8. adequate recordkeeping for Committee transactions;
9. proper disclosure of the allocation of costs associated with administrative expenses and activities conducted jointly on behalf of federal and non-federal elections and candidates (see Finding II.C.); and
10. other ⁼ audit procedures that were deemed necessary in the situation.

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

II. Audit Findings and Recommendations

A. Expenditures Made on Behalf of Clinton/Gore

Section 441a(d)(1) of Title 2 of the United States Code states, in part, that notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office.

Sections 110.7(a)(1) and (4) of Title 11 of the Code of Federal Regulations state that the national committee of a political party may make expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party and that such national committee may make expenditures authorized by this section through any designated agent, including State and subordinate party committees.

Sections 100.8(b)(16)(i) and (iv) of Title 11 of the Code of Federal Regulations state, in part, that the payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that: (1) such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general

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public communication or political advertising and (2) such materials are distributed by volunteers and not by commercial or for-profit operations.

During the review of Committee disbursements, the Audit staff identified payments, totaling \$44,369, that according to information contained in the Committee's disbursement records, appeared to have been made on behalf of Clinton/Gore. Committee purchase orders related to these payments were dated between July 31, 1992 and October 29, 1992.

Most of the purchase orders and invoices associated with these payments indicated that they were related to the purchase of Clinton/Gore campaign paraphernalia which included such items as pins, T-shirts, hats, campaign literature, bumper stickers, rally signs and lawn signs. To qualify as exempt activities, these materials would have to have been distributed by volunteers.

According to notations on the invoices, Clinton/Gore campaign paraphernalia, totaling \$16,287, were to be shipped from various vendors directly to "Clinton/Gore Dem HQ" or "Clinton/Gore '92 Committee" at 1600 University Avenue in St. Paul, Minnesota. Items totaling \$9,170 were to be shipped to the Minnesota DFL at this same address. The Audit staff was unable to verify that the Committee had an office at this location. Additional items totaling \$672 were to be shipped to an address in Wausau, Wisconsin.

The Audit staff also noted an invoice from a radio station which acknowledged an agreement between the radio station, the Committee and Clinton/Gore for a "rally ad" to be run between October 29, 1992 and November 1, 1992. The Committee paid \$966 to have this ad run.

A listing of the items apparently delivered to addresses other than the Committee's headquarters address, as well as the radio ad paid for by the Committee, was provided to the Committee at the exit conference. For the remainder, \$17,274 in materials apparently delivered to the Committee's headquarters, no documentation was present to demonstrate that the materials were distributed by volunteers or otherwise qualified as exempt activity. The Committee maintained that this activity was exempt from the definition of contribution/expenditure because the materials were used by volunteers in connection with volunteer activities.

The Committee was afforded 10 days to submit documentation related to the matters presented at the exit conference. A response was received in which the Committee's counsel stated that items shipped to 1600 University Avenue in St. Paul were not shipped directly to Clinton/Gore headquarters but were shipped to the Committee's St. Paul field office located at the same address. He added that these items were shipped to

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Glenda Murphy at this address and he described Ms. Murphy as a part-time Committee employee who was in charge of campaign paraphernalia at this field office.^{3/} Counsel further stated that these materials were used by party volunteers in connection with volunteer activities and that the notation of "Clinton/Gore" before "Dem HQ" on the invoices questioned by the auditors was in error.

Also included in the 10 day response were the following comments relative to Glenda Murphy provided by the Committee's former political director to the Committee's counsel:

"Glenda was employed by the Minnesota DFL Party as an office manager for our St. Paul field office during the 1992 campaign. During that time, she independently decided to purchase Clinton/Gore paraphernalia and sell them, paying for the paraphernalia through her personal bank account and depositing the proceeds in the same account.

When notified of this, you and I met with Glenda and her attorney to inform her that these actions were not on behalf of or sanctioned by the Minnesota DFL Party; rather, she should consider this an independent business operation of which she was the owner.

All funds used by the Minnesota DFL Party to purchase Clinton/Gore paraphernalia were permissible under federal election law. At no time did the Minnesota DFL Party require a payment for volunteers to use or keep paraphernalia."

The Audit staff saw no documentation demonstrating that there was a Committee field office located at 1600 University Avenue, the same address as the apparent Clinton/Gore headquarters in St. Paul. The leases reviewed during the fieldwork pertained only to the Committee's headquarters. In addition, no evidence was provided demonstrating that the paraphernalia shipped to other than the Committee's headquarters were distributed by volunteers and not by commercial or

^{3/} The Committee's Amended 1992 October 15 Quarterly and Pre-General Reports included payroll disbursements to Glenda Murphy. According to information developed during other audits, Ms. Murphy received payments totaling \$1,712 from the Clinton/Gore general election committee for "Paraphernalia/ Visiblt" [sic] \$500, "Paper & Supplies" \$212, and "Campaign Consultants" \$1,000. Ms. Murphy also received a payment from the Clinton primary committee in the amount of \$351 for "overhead."

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for-profit operations. Finally, the stated activities undertaken by Glenda Murphy may have constituted contributions/expenditures under the Act.

Since the Committee did not demonstrate that materials shipped to the 1600 University Avenue address were distributed by volunteers in accordance with 11 CFR §100.8(b)(16)(iv), the purchase of these materials does not qualify as exempt activity.

In summary, it appeared that the Committee made expenditures on behalf of Clinton/Gore, totaling \$44,369 (paraphernalia: \$16,287 - \$9,170 + \$672; radio ad: \$966; other materials: \$17,274), which did not qualify as exempt party activities.^{4/}

In the interim audit report the Audit staff recommended that the Committee demonstrate that it did not make \$44,369 in expenditures on behalf of Clinton/Gore and that the documentation provided should include but not be limited to:

- Evidence, such as volunteer sign-in sheets maintained by the Committee at the field office, which demonstrated that paraphernalia purchased by the Committee were distributed by volunteers and not by commercial or for-profit operations (see 11 CFR §100.8(b)(16));
- Documentation showing that the invoices addressed to "Clinton/Gore Dem HQ" or "Clinton/Gore '92 Committee" were incorrectly addressed;
- Materials, such as a lease and/or utility bills, documenting that the Committee had a field office at the same location as the apparent Clinton/Gore headquarters (1600 University Avenue, St. Paul, Minnesota); and
- Information relative to the activities performed by Glenda Murphy as a part-time Committee employee in charge of paraphernalia and the demonstration that activities conducted by Ms. Murphy on her own did not constitute contributions/expenditures under the Act. Copies of relevant bank statements and all enclosures, as well as invoices, purchase

^{4/} According to an August 24, 1992 memorandum from the president of the Association of State Democratic Chairs, the state party chairs were advised that they did not have authority to make 441a(d) expenditures on behalf of Clinton/Gore.

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orders and other documents related to the purchase and sale of the paraphernalia, were to be provided for the accounts used by Glenda Murphy in conducting the above activities.

In the Committee's response to the interim audit report the Committee counsel contended that the Clinton/Gore paraphernalia purchased by the Committee were distributed by volunteers and not by commercial or for-profit operations. To support this contention, counsel submitted photographs which, according to the written response, showed "...the campaign materials being reviewed, sorted, stuffed and taken to the post office for mailing." Also included were two samples of campaign brochures which, according to the response, were distributed by these volunteers. He stated that the nature of these brochures varied depending on which district was being targeted and were used for multi-candidate efforts. Counsel added that the Committee had sign-in lists of the volunteers who participated in these activities but that these lists were no longer in the Committee's possession.^{5/}

The response also included a photocopy of each invoice associated with the \$44,369 considered by the Audit staff to be expenditures made on behalf of Clinton/Gore. Committee counsel included written explanations relative to each invoice discussing what was purchased and how the items purchased were used by the Committee, e.g., T-shirts distributed by volunteers.

Committee counsel also explained that the invoices for paraphernalia purchases which were addressed to "Clinton/Gore Dem HQ" or "Clinton/Gore '92 Committee" at 1600 University Avenue were incorrectly addressed. He stated that the facility at this address was known as the "Clinton/Gore Democratic-Farmer-Labor Party headquarters" because both Clinton/Gore and the Committee had an office at this address. He included evidence that the Committee leased space at this address by submitting a photocopy of a lease for office space at this location signed by the Committee chairman at that time for the stated purpose: "Local office of Political Campaign." He also supplied two bills which demonstrated that the Committee had an office at this address.

With respect to the activities of Glenda Murphy, the part time Committee employee in charge of paraphernalia at this location, Committee counsel made the following comments:

"Glenda Murphy's duties. Ms. Murphy was a part-time DFL field worker during part of 1992. Her job duties included supervision

^{5/} One of the photographs showed individuals at a table apparently sorting campaign materials. On the wall behind this table were long sheets of paper with a sign above which read, "volunteers please sign in here."

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of volunteers at the DFL's Twin Cities field office and providing paraphernalia and campaign materials for use by those volunteers. She was also the office manager of that field office. The committee has been unable as yet to secure her personal records. The DFL did not control Ms. Murphy's activities other than when she worked for it."

It is the opinion of the Audit staff that based on the documentation provided in its response to the interim audit report, the Committee appears to have demonstrated that the paraphernalia purchased was distributed by volunteers and not by commercial or for-profit operations, and that the Committee has demonstrated that it had a field office at the same location as the apparent Clinton/Gore headquarters. As a result, it appears the Committee did not make \$44,369 in expenditures on behalf of Clinton/Gore.

Given that the Committee provided documentation relative to the \$44,369 in expenditures which demonstrated that these expenditures were apparently not made on behalf of Clinton/Gore, it appears unnecessary to continue to question whether Glenda Murphy's activities constituted contributions or expenditures under the Act.

B. Reporting of Receipts

1. Disclosure of Contributions from Individuals

Section 434(b)(3)(A) of Title 2 of the United States Code requires a political committee to report the identification of each person who makes a contribution to the committee in an aggregate amount or value in excess of \$200 per calendar year together with the date and amount of such contribution. Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" to be, 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.

Under 2 U.S.C. §453 and 11 CFR §108.7(a), the provisions of the Act, and rules and regulations issued thereunder, supersede and pre-empt any provision of state law with respect to election to Federal office.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor.

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The Audit staff performed a limited review^{6/} of contributions from individuals. The Committee itemized 236 contributions from individuals, totaling \$66,159, on its disclosure reports. Based on our review, 154 of these contributions, totaling \$49,919, were disclosed incorrectly. More than 90% of the dollar value of these errors involved instances where no street address was disclosed and/or the name of the contributor was disclosed incorrectly.

There were two types of errors associated with the disclosure of contributor names. The first type resulted from contribution checks bearing one signature made from joint accounts which the Committee disclosed as being from both account holders (e.g., Mr. and Mrs.). The second type occurred when the Committee disclosed contributions made on joint accounts to the account holder who had not signed the contribution check.

The Committee's deputy treasurer stated that for state reporting purposes, Minnesota state law permits the attribution of contributions made on a joint checking account to both account holders (e.g., Mr. and Mrs.) without both signatures.^{7/} In an interim conference, this Committee official stated that the Committee had received complaints from contributors who had received at their household duplicate solicitations addressed to each spouse. The Committee's computerized contributor files were set up to merge into a single record names of individuals from the same household so only one solicitation would be sent to each address.

At the exit conference, the deputy treasurer explained that the incomplete addresses disclosed on the reports resulted from a computer software problem where the address information was not always transferred correctly from the

^{6/} The Committee met the minimum recordkeeping requirements of 2 U.S.C. §432(c) and 11 CFR §102.9(a); however, the Committee could not produce a computerized file or a listing of all contributions received in 1991; the computerized file made available for 1992 proved to be inaccurate and incomplete.

^{7/} According to Minnesota Rules Ch. 4500.2400, "when a contribution is given on a check written on a joint account, it shall be deemed a contribution by the signator(s) of the check unless otherwise specified by the signator(s)." The Audit staff contacted the Minnesota Ethical Practices Board and confirmed that for state disclosure purposes, committees are permitted to disclose both account holders relative to a joint contribution without obtaining both signatures; however, some information (e.g., notation on check) is necessary to attribute the contribution to other than the signator.

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contributor data file to the disclosure reports. The Audit staff was able to locate the correct addresses for a majority of these errors in the Committee's contributor data files.

The Audit staff notes that the regulations at 11 CFR §110.1(k) require the signatures of each contributor to whom a contribution is attributed when attributing joint contributions to both spouses and that the contributors' names should have been disclosed accordingly. State law permits, but does not require, the disclosure of both account holders as the contributors without having the signatures of each; however, some indication is required to attribute the contribution to other than the individual who signed the check. At the exit conference Committee counsel noted his concern regarding the Committee's responsibility to differentiate between state and federal requirements in this area.

Subsequent to the exit conference, the Committee filed amended reports which materially corrected the disclosure errors noted above.

2. Disclosure of Contributions from Political Committees/Organizations

Section 434(b)(3)(B) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period. Sections 431(11) and (13)(B) of Title 2 of the United States Code state, in part, that the term "identification" means in the case of a political committee, the full name and address of such committee.

In addition, Section 104.3(a)(4)(ii) of Title 11 of the Code of Federal Regulations requires that the aggregate year-to-date total for each contributing committee be reported.

During our review of receipts, the Audit staff noted that the Committee itemized 168 contributions from political committees/organizations, totaling \$455,185. We determined that 78 of these items, totaling \$224,520, were not disclosed properly. Errors noted included incomplete address information and incorrect aggregate year-to-date totals.

At the exit conference, the deputy treasurer explained that the computer software utilized to prepare the FEC reports caused the disclosure errors. The software did not aggregate contributions from prior report periods within the calendar year and only one of the two address fields was transferred from the contributor data files to the reports. She stated that these software problems have since been corrected and that amended reports would be filed.

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A schedule of the disclosure errors was provided to the Committee at the exit conference. Subsequent to the exit conference, the Committee filed amended reports which corrected most of the disclosure errors noted above.

C. Reporting of Disbursements

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report 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.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations requires a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) to also report each disbursement from its allocation account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

Section 104.10(b)(3) of Title 11 of the Code of Federal Regulations requires a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) to also report each transfer of funds from its non-federal account to its separate allocation account for the purpose of paying such expenses.

1. Disclosure Errors

The Audit staff conducted a sample review of disbursements made by the Committee during 1991 and 1992; material error rates relative to the disclosure of payee addresses and purpose of disbursements on Schedules B (Itemized Disbursements) and H-4 (Joint Federal/Non-Federal Activity Schedule) were noted. In addition, a material error rate was noted relative to the disclosure on Schedules H-3 (Transfers From Non-Federal Accounts) of the identity of the non-federal accounts from which funds were transferred to federal accounts to pay allocable expenses. The name of the bank was disclosed on Schedules H-3, but not the name of the bank account.

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The Committee opened two allocation accounts on March 7, 1991 and April 29, 1991, respectively. During the first four months of 1991, the Committee paid allocable expenses by checks written from both the federal and non-federal accounts for the proportionate shares (see Finding II.D.).

The Audit staff reviewed the Committee's reports as originally filed for the audit period. Subsequent to the exit conference, the Committee filed amended reports which materially corrected the disclosure errors noted above.

2. = Disclosure of Payroll Transactions

Our review of payroll account records indicated that reports originally filed did not contain itemized entries on Schedules H-4 for individual checks issued from this account, as required. Rather, as confirmed by the Committee's deputy treasurer, a single entry representing the amount of the funding transfer from the Committee's operating account to its payroll account was itemized on each disclosure report filed.^{8/} Approximately 2,200 transactions were involved.

Subsequent to the exit conference, the Committee filed amended reports which materially corrected the payroll disclosure errors.

D. Misstatement of Financial Activity -(Non-Federal Portion)

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in part, that each report shall disclose the amount of cash on hand at the beginning of the reporting period, and the total amount of all receipts and disbursements for each reporting period and calendar year.

Section 102.5(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that if party committees which finance political activity in connection with federal and non-federal elections establish a separate federal account in a depository, no transfers may be made to such federal account from any other accounts maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 CFR 106.5(g).

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations provides that committees that have established separate federal and non-federal accounts under 11 CFR 102.5 shall pay the expenses of joint federal and non-federal

^{8/} The Committee followed pre-1991 regulations which only required committees to itemize the federal portion of transfers when payroll checks were issued from a non-federal account.

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activities as follows: (i) pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (ii) establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose paying the allocable expenses of joint federal and non-federal activities.

The Audit staff reconciled the Committee's reported activity to its bank activity for the period January 1, 1991 through December 31, 1992. Our review revealed a material misstatement in 1991 which occurred because the Committee did not report the payment of allocable expenses from its non-federal account.

The Committee did not open its two allocation accounts until March 7, 1991 and April 29, 1991. During the first four months of 1991, the Committee paid allocable expenses by checks written from both the federal and non-federal accounts for the proportionate shares. A review of the Committee's disbursement records indicated that 23 such payments were made during this time period. Rather than paying expenses from both the federal and non-federal accounts prior to opening an allocation account, the Committee should have paid all shared expenses from the federal account and then seek reimbursement from the non-federal account for its allocable share in accordance with 11 CFR 106.5(g)(1)(i).

Although these transactions were not handled in accordance with the regulations, nevertheless, the non-federal portions of these payments totaling \$25,761, should now be reported as memo entries on Schedules H-4 (Joint Federal/Non-Federal Activity Schedule).

The Committee's deputy treasurer stated that payments were made this way prior to the opening of the allocation accounts. A listing of the 23 payments, totaling \$25,761, was provided to the Committee at the exit conference.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules H-4 listing as memo entries the non-federal portions of these payments, totaling \$25,761. The Committee complied with this recommendation.

E. Apparent Excessive In-Kind Contribution From A Political Committee

Section 441a(a)(1)(C) of Title 2 of the United States Code prohibits a person from making contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

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Section 431(11) of Title 2 of the United States Code states that the term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a 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. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services without charge is a contribution.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section.

Congressman Gerry Sikorski was the incumbent from Minnesota's 8th Congressional District in 1992.^{9/} According to documentation made available by the Committee, an agreement was made between his authorized committee, the Friends of Sikorski (FOS), and the Committee where six FOS employees were loaned to the Committee to perform professional and administrative services and to conduct multiple candidate campaigning beginning October 1, 1992. According to documentation attached to the agreement, five of these individuals, described as "field staff," were to provide 60% of their regular work hours to the Committee and would "...spend 3.5 hours per day recruiting volunteers for multiple candidate doorknocks and 3 hours per day doorknocking for multiple candidates." One individual, noted as "phone bank supervisor," was to provide 100% of his regular work hours to the Committee. The agreement stipulated that these individuals were "subject to the exclusive direction" of the Committee's political director at that time.

The agreement further specified that FOS would be "...liable for all payroll taxes, compensation and other costs associated with maintaining each of the employees." The agreement, which was to terminate November 3, 1992 (Election Day), also directed the Committee to pay FOS \$12,000 for the services of these FOS employees. A payment in the amount of \$12,000 was made on that date.

^{9/} Congressman Sikorski won the Democratic primary election on September 15, 1992 with 49% of the vote, but lost in the general election with 33% of the vote.

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The Audit staff reviewed the disclosure reports filed by FOS during this time period and noted that FOS reported salary payments to these six individuals on October 29, 1992 totaling \$5,636. Since all salary payments reportedly made to these individuals were dated at the end of each month relative to the July through October 1992 time frame, the Audit staff viewed the October 29, 1992 salary payments as covering services for the month of October - which covered most of the time period these services were to be provided to the Committee. Payments were also reportedly made by FOS during this time period relative to federal and state withholding, workmen's compensation and unemployment taxes.

An undated reimbursement request made to the Committee from FOS itemized \$18,139 in costs relative to the phone bank operations and field staff services performed by these six FOS employees. The request noted that \$12,000 had been paid on November 2, 1992, leaving an amount due of \$6,139. No documentation was located indicating that this obligation was ever paid.

If the Committee received goods and services from these FOS employees valued at \$18,139, it appears an in-kind contribution in the amount of \$6,139 occurred. Since FOS had already made a \$1,400 contribution on July 24, 1992, the Committee apparently accepted an excessive contribution totaling \$2,539 ($\$1,400 + \$6,139 - \$5,000$).

In the interim audit report the Audit staff recommended that the Committee present documentation demonstrating that no excessive in-kind contribution was accepted and that the documentation should include but not be limited to:

- A description of the services provided to the Committee by the six FOS employees;
- the dates these services were provided;
- a valuation of the actual services provided;
- the amounts paid to these individuals by FOS relative to these services;
- the amount(s) the Committee reimbursed FOS for these services; and
- a description of materials distributed, samples of scripts used and an explanation as to why no allocations to candidates were disclosed.

It was also noted in the interim audit report that additional recommendations may be forthcoming based on the Audit staff's review of any documentation provided.

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In the Committee's response to the interim audit report the Committee counsel stated that after the election, the Committee received a "billing" from FOS which indicated that the Committee owed FOS a total of \$18,139 broken down as follows: \$6,600 for the use of FOS field staff [he pointed out that the amount should have been \$6,660 (60% of \$11,100)]; \$2,500 for the phone bank supervisor; \$1,000 for another individual; and total phone bank charges of \$8,039. He added that the Committee decided to only pay \$12,000 for the following reasons: the \$18,139 amount per invoice exceeded the \$12,000 amount agreed upon in the contract; the scope of the contract did not cover any employees other than field staff; 100% of the phone bank costs, totaling \$11,539, were included instead of the 60% noted in the contract.

The Committee counsel concluded that the Committee did not owe FOS \$6,139 as stated in the interim audit report, which was the difference between \$12,000 and \$18,139. He stated that this position was conveyed to FOS and that this matter was resolved by the Committee making no further payments to FOS. Counsel added that even if the Committee owed additional payments to FOS, the highest amount they would owe would be 60% of the \$22,639 (\$13,584) in total phone bank-related charges less the \$12,000 already paid, or \$1,584. However, he reiterated that it is the Committee's position that it owed FOS nothing in excess of the \$12,000 already paid.

Also enclosed with the Committee's response was an affidavit from the Committee's former political director who stated that in that capacity he had entered into a contract with FOS to aid in multi-candidate campaigning. He stated in the affidavit that after the election he received a memorandum from the FOS director from which he interpreted that the phone bank charges (\$8,039), phone bank supervisor charge (\$2,500) and the charge for another individual (\$1,000) were not part of the contract. He added that the Committee was billed 100% for the phone bank supervisor and phone bank employees rather than the maximum 60% which he would have agreed to had the subject been raised in the initial contract.

He then stated in the affidavit that he advised the FOS director that the invoice was in error because the contract price was limited to \$12,000, the contract provided that 60% of the joint expenses would be paid by the Committee and that although the field staff had been working on multi-candidate work, not just on FOS work, he had no such proof that the phone bank staff had spend 60% of their time on multi-candidate projects. He adds that they agreed to compromise on the matter by having the Committee pay no more than the \$12,000 contract price.

The Audit staff notes that the agreement between the Committee and FOS, which was reviewed during the fieldwork and again submitted with the Committee's response, was signed by the Committee's former political director but not by a representative

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from FOS. It is stated in the agreement that the Committee "...shall be entitled to no more than 60% of the normal and regular time of each of the employees listed on Exhibit A." Although no Exhibit A was attached, other documentation indicated that six FOS staff were involved with this project - five field staff and one supervisor. There was also another individual involved with this project but the Audit staff was unable to determine if he was associated with FOS. It is further stated in the agreement that the Committee shall pay \$12,000 for these services.

One of the documents attached to the agreement reviewed during the fieldwork was an undated and unsigned memorandum from the director of FOS to the former political director of the Committee which stated that the field staff salary was to be reimbursed to FOS at 60%, the phone bank supervisor salary at 100% and the phone bank employees at 100%. It was indicated on this memorandum that a listing of phone bank employees and copies of phone bank scripts were attached at one time but no listing or scripts were attached when the Audit staff reviewed this document.

There appears to be some disagreement between the Committee representatives' comments in the Committee's response to the interim audit report and the documentation attached to the agreement reviewed by the Audit staff during the fieldwork. The documentation indicated that the Committee owed 100% of the costs relative to phone bank charges, the phone bank supervisor and another individual, whereas Committee counsel and the former political director contended that the Committee owed only 60% for these charges.

The Audit staff notes that the Committee's response did not include any information relative to the amounts paid by FOS to the FOS staff involved with this project, nor did the Committee include a description of materials distributed, samples of scripts used or an explanation as to why no allocations to candidates were disclosed. In addition, no evidence from FOS was included by the Committee which demonstrated that the \$12,000 paid by the Committee for these services was considered by FOS to be payment in full. Given that the amount in question is at most \$2,539 and that based on the Committee's response, this amount could be characterized as a disputed debt that has been resolved, it now appears that no further action is warranted.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

January 5, 1996

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Abel P. Montez *AM*
Attorney

SUBJECT: Proposed Final Audit Report on Minnesota Democratic Farmer Labor
Party (LRA #462)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Minnesota Democratic Farmer Labor Party ("the Committee") submitted to this Office on November 21, 1995¹. The following memorandum summarizes our comments on the proposed report. We concur with findings in the proposed report which are not discussed

¹ Because the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 224, we recommend that the Commission's discussion of this document be conducted in open session.

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separately in the following memorandum. If you have any questions concerning our comments, please contact Abel P. M6ntez, the attorney assigned to this audit.

II. EXPENDITURES ON BEHALF OF THE PRESIDENTIAL AND VICE PRESIDENTIAL NOMINEES (II.A.)

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The proposed report raises the issues of: (1) whether the Committee demonstrated that it did not make certain disbursements on behalf of the Clinton/Gore '92 Committee ("Clinton/Gore") in violation of 2 U.S.C. § 441a(d) by purchasing Clinton/Gore paraphernalia, and (2) further questioning of the activities of a part-time committee employee, who handled such paraphernalia, is warranted. The Committee was not authorized by the national committee to make expenditures on behalf of Clinton/Gore. 11 C.F.R. § 110.7(a)(4). The Interim Audit Report identified seven invoices showing that the Committee had spent a total of \$44,369 on behalf of Clinton/Gore for bumper stickers, printing services, brochures, and T-shirts, and concluded that the amounts spent on the paraphernalia on behalf of Clinton/Gore did not qualify as exempt party activities. 11 C.F.R. § 100.8(b)(16).

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These amounts, which were found in the Committee's disbursement records, are associated with purchase orders and invoices dated between July 31, 1992 and October 29, 1992. Most of the purchase orders and invoices indicated that the Committee purchased the Clinton/Gore campaign paraphernalia. Some of the invoices indicate that various vendors of Clinton/Gore campaign paraphernalia billed the Committee at its headquarters at "352 Wacouta" in St. Paul, but shipped the items directly to "Clinton/Gore Dem HQ" or "Clinton/Gore '92 Committee," located at "1600 University Avenue" in St. Paul. Some invoices indicate that the vendors billed "Minnesota DFL" at "1600 University Avenue, and shipped items to "Minnesota DFL" at "1600 University Ave."

Most of the invoices were written to the "Attention" of Glenda Murphy, who apparently worked at "1600 University Avenue." According to the Committee, Ms. Murphy was a part-time Committee employee in charge of campaign paraphernalia at the field office. The Committee maintains that Ms. Murphy decided to purchase and sell Clinton/Gore paraphernalia. The Committee states that Ms. Murphy used her personal bank account to deposit the proceeds from the sales.

The Interim Audit Report recommended that the Committee demonstrate that: (1) it did not make expenditures on behalf of Clinton/Gore by providing evidence that the paraphernalia was distributed by volunteers, (2) the Committee had a field office at the same location as the Clinton/Gore headquarters, and (3) invoices addressed to Clinton/Gore should have been correctly addressed to the Committee. The Interim Audit Report also recommended that the Committee provide more information with regard to Ms. Murphy's business activity of selling paraphernalia. Based on the Committee's response to

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Minnesota Democratic Farmer Labor Party (LRA # 462)
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the Interim Audit Report, the proposed Final Audit Report concludes that the Committee demonstrated that the purchase of campaign paraphernalia was exempt because the materials were distributed by volunteers, the Committee had a field office at the same location as the presidential candidate headquarters, and the Clinton/Gore invoices had been incorrectly addressed. Because the Audit Division did not receive additional information regarding Ms. Murphy's activities, the proposed report continues to question whether her activities constituted contributions or expenditures under the Act.

After reviewing the Committee's response to the Interim Audit Report, this Office concurs with Audit Division's analysis that the Committee demonstrated that it did not make certain disbursements on behalf of Clinton/Gore. The Committee provided photographs showing volunteers reviewing, sorting, stuffing, and mailing campaign materials. One photograph shows individuals at a table apparently sorting campaign materials; the wall behind the table has a long sheet of paper with a sign stating "volunteers please sign in." The committee included two samples of campaign brochures, which apparently were distributed by the volunteers. Therefore, it appears that the Committee used volunteers to distribute campaign materials and that the related expenses for the materials are exempt from the definition of expenditure. 11 C.F.R. § 100.8(b)(16).

The Committee also included photocopies of each invoice, and explained how the items purchased were used by the Committee. The Committee also provided copies of leases, showing that it leased space at "1600 University Avenue." The Committee explained that because it and Clinton/Gore had an office at "1600 University Avenue," some invoices were inaccurately addressed to Clinton/Gore. The Committee states that the "1600 University Avenue" address was known as the "Clinton/Gore Democratic-Farmer-Labor Party headquarters." In light of this explanatory information, the Office of General Counsel does not believe that the disbursements at issue were made on behalf of Clinton/Gore.

Because the Committee has provided information relative to the \$44,369 in expenditures and demonstrated that it did not make disbursements on behalf of Clinton/Gore, this Office believes it is not necessary to continue to question whether Ms. Murphy's activities constituted contributions or expenditures under the Act. The Committee's documents and information made available in response to the Interim Audit Report do not appear to provide any evidence that Ms. Murphy's activities constituted contributions or expenditures under the Act. Therefore, this Office recommends that the Audit Division revise its report to reflect this view.

III. IN-KIND CONTRIBUTION FROM A POLITICAL COMMITTEE

The proposed report raises the issue of whether the Committee has sufficiently demonstrated or explained that it did not accept an in-kind contribution from Friends of

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Memorandum to Robert J. Costa
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Minnesota Democratic Farmer Labor Party (LRA # 462)
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Sikorski ("FOS"), a congressional candidate's political committee. FOS entered into an agreement with the Committee to provide FOS employees to the Committee to perform professional and administrative services and to conduct multiple candidate campaigning. The agreement called for the payment of \$12,000 for the services of these employees from October 1, 1992 to November 3, 1992. The agreement stated that the Committee would be "entitled to no more than 60% of the normal and regular time" of each of five employees listed in a separate document. A document, dated October 1, 1992, stated that the five individuals, termed "the field staff," would be "spending six and a half hours per day, 60% of their time, on multiple candidate campaigning." These five employees were also required to "spend 3.5 hours per day recruiting volunteers for multiple candidate doorknocks and 3 hours per day doorknocking for multiple candidates."

On November 3, 1992, the Committee paid the \$12,000. During fieldwork, the Audit Division found an undated memorandum from FOS's Ruth Stanoch. Ms. Stanoch billed the Committee \$18,139 in costs relative to phone bank operations and field staff services performed by FOS employees as follows:

United Democratic Front Phone Bank	\$ 8,039.24
Phone Bank Supervisor	\$ 2,500.00
Field staff	\$ 6,600.00
Gary Cerkvenik	\$ 1,000.00

The memorandum accounted for the \$12,000 payment FOS had received from the Committee. The request stated that \$6,139 was due. The Audit Division did not find documents showing that the Committee paid the \$6,139.

The Interim Audit Report recommended that the Committee present documentation to demonstrate that it did not accept an excessive in-kind contribution. In response to the Interim Audit Report, the Committee's counsel stated that the Committee had received Ms. Stanoch's memorandum, but had not paid the difference between the \$18,139 and the \$12,000 payment because the contractual amount was for \$12,000. In a signed affidavit, Todd Rapp, the Committee's political director, states that when he received Ms. Stanoch's memorandum, "it was clear to me that the [United Democratic Fund] phone bank charges, phone bank supervisor charge and Gary Cerkvenik charge were not part of the contract." He states that he contacted Ms. Stanoch and advised her that he believed that the invoice was in error because, among other things, the contractual price was limited to \$12,000 and that he knew that the field staff workers had been working on multi-candidate work and not just FOS work." He states that he told Ms. Stanoch that he had "no such evidence regarding the telephone bank project" and that he "lacked proof that the phone bankers, their supervisor, and/or Mr. Cerkvenik had spent 60% of their time on multi-candidate projects."

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Minnesota Democratic Farmer Labor Party (LRA # 462)
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The proposed Final Audit Report notes that the Committee's response to the Interim Audit Report did not include any information relative to the amounts paid by FOS to its staff involved with this project, nor did the Committee include a description of materials distributed, samples of scripts used or an explanation as to why no allocations to candidates were disclosed. In addition, the proposed report states that there is no evidence from FOS which demonstrated that the \$12,000 payment was considered by FOS to be payment in full. As a result, the proposed report concludes that the Committee accepted an excessive contribution from FOS.

This Office believes that the Committee has sufficiently demonstrated or explained that it did not accept an in-kind contribution from the political committee. The agreement between the Committee and FOS did not provide for or mention a phone bank operation. The agreement stated that the Committee would "lease" employees from FOS for "professional and administrative services." The agreement made clear that "[a]s and for compensation for the loaned servants," the Committee would pay \$12,000 to FOS. The Committee paid the \$12,000. According to a signed affidavit from the Committee's director, FOS's charges itemized in the Stanoch memorandum for a phone bank and employees associated with the phone bank were in error.² Except for the Stanoch memorandum, there is no evidence that the Committee was obligated to pay for the phone bank operation or that the Committee was aware prior to the time of the Stanoch memorandum that these employees would work on the phone bank operation. Therefore, this Office recommends that the Audit Division revise its report to reflect the position that the FOS/Committee transaction may have involved a disputed debt that has been apparently resolved. See 11 C.F.R. § 116.1(d) ("disputed debt" defined as "obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee").

² We note that the copy of the FOS/Committee agreement was signed only by Mr. Rapp. The fact that representatives of SOR did not sign the agreement is not determinative of whether an obligation existed. See generally *Welsh v. Barnes-Duluth Shipbuilding Co.* 221 Minn. 37, 43 (1945) (contract may be binding on a party even though not signed by it, assent to contract's terms can be shown by the fact that the parties accepted the writing as a binding contract and acted on it as such, even though it was not signed).

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20543

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February 13, 1996

Mr. Paul K. Schulte, Treasurer
Minnesota Democratic Farmer
Labor Party
352 Wacouta Street
St. Paul, MN 55101

Dear Mr. Schulte:

Attached please find the Final Audit Report on the Minnesota Democratic Farmer Labor Party. The Commission approved the report on February 12, 1996.

The Commission approved Final Audit Report will be placed on the public record on February 21, 1996. 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 Martin Favin 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

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CHRONOLOGY

MINNESOTA DEMOCRATIC FARMER LABOR PARTY

Audit Fieldwork 2/15/94 - 4/15/94

Interim Audit Report to
the Committee 7/6/95

Response Received to the
Interim Audit Report 10/2/95

Final Audit Report Approved 2/12/96

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