



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1981

MEMORANDUM

TO: FRED EILAND
PRESS OFFICE

FROM: BOB COSTA *BJC*

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT
REPORT - REAGAN FOR PRESIDENT

Attached please find a copy of the final audit report of the Reagan For President committee which was approved by the Commission on January 27, 1981.

Informational copies of the report have been received by all parties involved and this report may be released to the public as of today, February 2, 1981.

Attachment as stated

cc: FEC Library
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✓ Public Record

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON REAGAN FOR PRESIDENT

I. Background

A. Overview

This report is based on an audit of Reagan For President ("the Committee"), 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 9038(a) of Title 26 of the United States Code which states that after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037.

In addition, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on February 28, 1979, as the principal campaign committee of the Honorable Ronald Reagan, candidate for the Republican nomination for President of the United States. The Committee maintains its headquarters in Arlington, Virginia (formerly, Los Angeles, California).

The audit covered the period from January 1, 1980 through July 31, 1980.* During this period the Committee reported an opening cash balance of \$554,574.98, total receipts of \$20,572,043.05, total expenditures of \$17,757,936.04, and a closing cash balance of \$3,368,681.99. In addition, certain financial activity has been reviewed through December 19, 1980.

This report is based upon documents and working papers supporting each of the factual statements contained herein. They form part of the record upon which the Commission based its decisions on the matters addressed in the report and were available to the Commissioners and appropriate staff for review.

* A Threshold Audit was conducted covering the period from 2/29/79 through 12/31/79 and a report issued by the Commission on October 16, 1980. In this report several of the findings relate to the Committee's activity from inception (Feb. 29, 1979) through December 19, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were Senator Paul Laxalt, Chairman, and Ms. Bay Buchanan, Treasurer.

C. Scope

The audit included such tests as verification of total reported receipts, expenditures and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations
Relating to Title 2 of the United States Code

A. Limitation on Expenditures

Section 441a(b)(1)(A) of Title 2, United States Code, states, in part, that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000 as adjusted for the change in the consumer price index since 1974, in the case of a campaign for nomination for election to such office (also see 2 U.S.C. 441a(c)).

Section 9035.1(a) of Title 11, Code of Federal Regulations states that no candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed \$10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or \$200,000.00 (as adjusted under 2 U.S.C. 441a(c)).

In addition, Section 431(9)(B)(vi) of Title 2, United States Code excludes from the definition of the term "expenditure": any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under Section 441a(b), but all such costs shall be reported in accordance with Section 434(b).

Section 110.8(c) (2) of Title 11, Code of Federal Regulations provides that expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State, 11 C.F.R. 100.8(b) (21) (relating to the 20% fundraising exemption) notwithstanding.

Section 100.8(b) (15) states, in relevant part, that expenditures for services solely to ensure compliance with the Act made by a candidate certified to receive Primary Matching Funds under 11 C.F.R. Part 9034 do not count against such candidate's expenditure limitations under 11 C.F.R. 9035 or 11 C.F.R. 110.8.

The limitations relating to the 1980 primary election for nomination are:

\$14,720,000.00	2 U.S.C. 441a(b) (1) (A)
<u>2,944,000.00</u>	20% fundraising exemption
\$17,664,000.00	total fundraising plus operating expenditures

1. Allocation of Fundraising Expenses

The Audit staff reviewed the Committee's method of classifying expenditures as fundraising costs subject to the 20% fundraising exemption. During the period February 26, 1979 through July 31, 1980, the Committee reported on FEC Form 3P, Line 25, "Exempt Fundraising, Legal and Accounting Expenditures", \$3,322,829.38 1/ in expenditures classified as exempt fundraising costs.

Our review of the Committee's documentation and worksheets indicated that the following categories of expenses were, according to the Committee classifiable as exempt fundraising expenses:

Direct Mail Services	\$1,555,093.17
Fundraising Events and associated expenses	633,160.40
Salaries, Consulting Fees and associated expenses	537,700.58
Allocable portion of National Headquarter's expenses	454,090.33
Allocable portion of Tour Travel expenses	225,653.76
Allocable portion of States' Mailing expenses	<u>100,215.76</u>
	\$3,505,914.00 <u>2/</u>

1/ Includes \$6,415.66 probably classifiable as exempt legal and accounting.

2/ As noted previously, the Committee reported \$3,322,829.38 as exempt fundraising expenses.

In summary, given the \$2,944,000.00 exemption for fundraising expenses contained at 2 U.S.C. 431(9)(B)(vi), it is our opinion that the Committee has included \$376,252.71 (net) in expenses on Line 25 which should be reported as operating expenses on Line 24 and therefore subject to the overall expenditure limit contained at 2 U.S.C. 441a(b)(1)(A).

Recap:

Expenditures reported as exempt fundraising for Line 25, 2/26/79 through 7/31/80	\$3,322,829.38
Less: Reported refunds of fundraising expenses	<u>(2,576.67)</u>
Net fundraising expenditures per report	\$3,320,252.71
Less: Fundraising expense exemption	<u>(2,944,000.00)</u>
Overage, reclassifiable to operating expenditures chargeable to overall limitation	<u>\$ 376,252.71*</u>

It should be noted that the Audit staff does not believe that the Committee's allocations of 20% of Headquarter's Tour Travel and States' Mailing Expenses are necessarily reflective of the actual allocable portion of these expenses attributable to its fundraising efforts. Based on the Committee documentation reviewed, it appears that the 20% factor is merely an estimate. However, in view of the fact that after applying direct charges of \$2,725,954.15 against the \$2,944,000 exemption the remaining \$218,045.85 which may be allocated to exempt fundraising represents approximately 9.6% of National Headquarter's expense (\$218,045.85 ÷ \$2,270,451.66 (total headquarter's expense)), which appears reasonable. The allocation of a portion of Tour Travel and States' Mailing Expenses becomes irrelevant in light of the above discussion.

2. Limitation on Expenditures 2 U.S.C. 441a(b)(1)(A)

As noted previously, the expenditure limitation is \$14,720,000.00. An analysis of Committee disclosure reports for the period from February 26, 1979 through August 31, 1980, yielded the following with respect to expenditures subject to the \$14,720,000 limitation.

- * Subsequent to the Committee's receipt of the interim report, \$136,691.14 of the \$376,252.71 was identified as being costs related to the exempt legal and accounting expense category (see page 9 for adjustment (-\$136,691.14) to expenditures subject to the overall limit).

Expenditures classified as operating 2/26/79 to 7/31/80-Lines 24 and 26b	\$ 15,197,569.10
Expenditures classified as fundraising 2/26/79 to 7/31/80-Line 25 (net of reported refunds)	\$ 3,320,252.71
Less: 20% fundraising exemption	(\$ 2,944,000.00)
Less: Refunds and Rebates pertaining to operating expenditures	(\$ 974,563.22)
Expenditures subject to limitation (Audit analysis) 2/26/79-7/31/80	\$ 14,599,258.59

Adjustments to Reported Figures 2/26/79 through 7/31/80

Add: Expenditures subject to the limitation as reported for the period 8/1/80-8/31/80	\$ 473,832.59
Add: Expenditure on 8/11/80 for Convention travel not included in \$473,832.59 above	\$ 29,859.58
Add: Reported Debts and Obligations Owed by the Committee as of 8/31/80	\$ 9,675.36 *
Less: Reported Debts and Obligations Owed to the Committee as of 8/31/80	(\$ 160,060.00) *
Total Expenditures Subject to Limitation 2/26/79-8/31/80 per Committee's reports	<u>\$ 14,952,566.12</u>

Based on our preliminary analysis performed in October, 1980, it appeared that the Committee had exceeded the expenditure limitation at 2 U.S.C. 441a(b)(1)(A) in the amount of \$232,566.12 (\$14,952,566.12 less \$14,720,000). It should be noted that the Committee did not identify on its reports any amounts chargeable to the exempt legal and accounting expense category. It was suggested that the Committee might wish to review its exempt legal and accounting costs and reallocate, on a reasonable basis, an amount from operating expenses to the exempt legal and accounting category by amending the appropriate expenditures' sections of disclosure reports filed to date.

On November 18, 1980, the Commission approved the recommendation of the Audit staff contained in the interim report that the Committee be requested to show within 30 days of receipt of the audit report that the overall expenditure limitation had not been exceeded as set forth in the interim report. Absent such a showing, a determination would be made regarding an amount required to be repaid to the U. S. Treasury.

* Obligations relating to expenses solely to ensure compliance with the Act may be included in these figures.

Analysis of Committee Response

In its response to the interim report, the Treasurer indicated that the Committee's compliance expenditures were summarized and reclassified on the post-election report (covering the period 10/16/80-11/24/80). She also stated that Reagan For President is now well below the expenditure limitation as set forth in 2 U.S.C. 441a(b)(1)(A). The Audit staff's analysis of the reclassification of expenditures from operating (i.e. chargeable to the overall limit) to legal and accounting (exempt from overall limit) is discussed below.

The Committee's 30 day post general election report was filed on December 8, 1980. Within this report, the Committee reclassified (amended) \$807,763.61 in expenditures, from operating expenditures (subject to the limitation, line 24) to exempt legal and accounting (line 25). The majority of the reclassified expenditures were for salaries, consulting and legal services, interest expense, and computer services.

The Audit staff's analysis of the disbursements reclassified to exempt legal and accounting by the Committee is as follows:

Payroll and Payroll Taxes

Through discussions with the Assistant Treasurer the Audit staff has determined that 100% of the payroll and payroll taxes for the Treasurer's office (\$384,556.01) has been reclassified to exempt legal and accounting. The Assistant Treasurer could not provide the Audit staff with written job descriptions for personnel within the Treasurer's office or identify the work areas where certain individuals were assigned. Therefore, the reasonableness of this reclassification could not be determined. However, the Audit staff does not believe that 100% of the functions performed within the Treasurer's office are solely for the purpose of insuring compliance with the Act (see 11 C.F.R. 100.8(b)(15)).

For example, the following non-compliance accounting functions must be considered in determining a reasonable allocation:

- 1) maintaining cash receipt records;
- 2) writing checks, transmitting funds to field workers, recording disbursements;
- 3) reconciling bank statements;
- 4) preparing cash flow reports;
- 5) budget preparation and budget performance reports;

- 6) keeping payroll records, paying employees, filing quarterly payroll returns and making state and federal payroll deposits; and,
- 7) filing exempt organization return (1120 POL) with the IRS. Section 527 of the Internal Revenue Code requires that all unrelated business income be reported. Consequently, the Committee must maintain accounting records sufficient to permit compliance with the IRS reporting and recordkeeping requirements.

In threshold audit reports issued on two (2) 1980 Presidential campaigns, the Commission approved an allocation of 85% of the costs associated with the Treasurer's office as a reasonable percentage allocable to exempt legal and accounting. This percentage was developed through studies based on the functions performed in the Treasurer's office. As previously stated, Committee records were not available to conduct such a study. However, based on prior Commission action regarding two campaigns of comparable size, the Audit staff believes that the percentage (85%) represents a reasonable allocation of costs to exempt legal and accounting.

Based on the above, the amount of payroll and payroll taxes chargeable to exempt legal and accounting should be \$326,872.60 ($\$384,556.01 \times .85$), and the amount chargeable to operating should be \$57,683.41 ($\$384,556.01 \times .15$).

Headquarters' Overhead

The Committee has reclassified overhead costs, totaling \$171,150.68, to exempt legal and accounting. This reclassification represents a 100% allocation of overhead costs relating to the operations of the Treasurer's office. It has been established that certain functions performed by personnel in the Treasurer's office are not specifically compliance related. Therefore, the Audit staff believes that the same percentage applied to payroll (85%) should apply to overhead costs.

Based on the above, the amount of overhead costs chargeable to exempt legal and accounting should be \$145,478.07 ($\$171,150.68 \times .85$), and the amount chargeable to operating should be \$25,672.61 ($\$171,150.68 \times .15$).

Interest Payments and Bank Charges

The Committee reclassified payments made to various banks, totaling \$129,740.71. The payments were for interest on bank loans (\$128,264.61) and other routine bank charges (\$1,476.10). The Audit staff disagrees with this reclassification since payments for interest and other routine bank charges, in our opinion, are not considered disbursements covered by 11 C.F.R. 100.8(b)(15) and therefore are not exempt from the expenditure limitations pursuant to 2 U.S.C. 441a(b)(1)(A) and 26 U.S.C. 9034.

Based on the above, the payments for interest on bank loans and other routine bank charges should be chargeable to operating (\$129,740.71).

Miscellaneous Items

a) Other disbursements, totaling \$3,092.96, were, in our opinion, erroneously reclassified to exempt legal and accounting. The disbursements were for reimbursed air travel and lodging, newspaper advertisements, autopen plates, and employment fees.

Based on the above, \$3,092.96 should be chargeable to operating.

b) The Committee also reclassified payments totaling \$7,210.60 to exempt legal and accounting. The payments were made to individuals assigned to the Treasurer's office. Generally, the payments were for per diem expenses and various reimbursed expenses. As previously determined approximately 85% of an individuals time is spent on compliance related activities.

Based on the above, the amount chargeable to exempt legal and accounting should be \$6,129.01 and the amount chargeable to operating should be \$1,081.59.

Recap of Audit Adjustment of Committee Reclassification

Amount reclassified by Committee	\$807,763.61
Less: Payroll costs not chargeable to exempt legal and accounting (\$384,556.01 x .15)	(57,683.41)
Less: Headquarter's overhead not chargeable to exempt legal and accounting (\$171,150.68 x .15)	(25,672.61)
Less: Interest payments and other bank charges not chargeable to exempt legal and accounting	(129,740.71)
Less: Miscellaneous items not chargeable to exempt legal and accounting (see (a) and (b) above)	(4,174.55)
Total amount of reclassified disbursements determined as reasonable charges to exempt legal and accounting	<u>\$590,492.33</u>

Our analysis of the Committee's response to the interim report and review of reports filed for activity through 11/24/80 revealed the following:

Expenditures subject to limitation (2/26/79-7/31/80) as previously noted on page 5.	\$14,599,258.59
Adjustments to Reported Figures 2/26/79 through 7/31/80.	
Add: Expenditures subject to the limitation as reported for the period 8/1/80-11/24/80.	718,485.41
Add: Expenditure on 8/11/80 for convention travel not included in the \$718,485.41 above.	29,859.58
Add: Reported Debts and Obligations Owed by the Committee as of 11/24/80.	42,059.63*
Add: Maximum net income realizable for tours #4 through #26.	142,990.78
Add: Disbursements previously allocated to exempt legal and accounting (line 25) in error.	13,351.80
Less: Reported Debts and Obligations owed to the Committee as of 11/24/80.	(21,434.50)*
Less: Amount of reclassified expenditures (\$807,763.61) per audit's analysis chargeable to exempt legal and accounting.	(590,492.33) 3/
Less: Disbursements erroneously disclosed as exempt fundraising but chargeable to exempt legal and accounting.	<u>(136,691.14)</u>
Total Expenditures Subject to the Limitation 2/26/79 - 11/24/80.	<u>\$14,797,387.82</u> 4/

It appears that based on Committee reports filed and audit work conducted to date that the Committee has exceeded the expenditure limitation at 2 U.S.C. 441a(b)(1)(A) in the amount of \$77,387.82 (\$14,797,387.82 - \$14,720,000.00).

Recommendation

It is the recommendation of the Audit staff that the Committee amend its post-general election report to reflect the adjustments noted above. Further, it is recommended that, the Commission make a final determination that the amount (\$77,387.82) in excess of the overall expenditure limitation at 2 U.S.C. 441a(b)(1)(A) be considered a non-qualified campaign expense and repayable to the U.S. Treasury (see Finding III.B.2. for repayment discussion).

See following page for footnotes.

* See footnote */ at page 5.

3/ If the entire \$807,763.61 were reclassified to exempt legal and accounting, the Committee would not have exceeded the expenditure limitation at 2 U.S.C. 441a(b)(1)(A).

4/ Finding III.D.1 and D.4 contain recommendations relating to reimbursements due the Committee from the Candidate's General Election Committee for the purchase of Primary equipment and certain expenses paid by the Primary but apparently related to the Candidate's general election campaign. The value of these reimbursements due the Committee has not been considered in arriving at the \$14,797,387.82 figure noted above. In addition, actual receipt and disbursement activity occurring after 11/24/80 will be incorporated as information becomes available. Adjustments to total expenditures subject to the limitation may also be warranted based on unresolved questions relating to the Committee's settlement/negotiation of certain debts (including checks issued and subsequently voided).

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B. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provide, in part, that no candidate for the Office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or \$200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the Office of President of the United States with respect to a particular state shall be allocated to that state.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific state shall be attributed to that state, and that expenditures by a Presidential candidate for use in two (2) or more states shall be attributed to each state based on the voting age population in each state which can reasonably be expected to be influenced by such expenditures.

Response to Threshold Audit Findings

During the Threshold audit, the Committee was made aware of several areas (regional directors' salaries, consulting fees, and a time delay in receiving the expenditure information from the state offices) which resulted in state allocation problems. The Audit staff recommended that the Committee review its expenditures and file an amended FEC Form 3Pc reallocating the dollar value of those expenditures requiring allocation to the appropriate state(s), and provide copies of detailed working papers in support of the reallocation. As of October 10, 1980 the Committee had not filed an amended FEC Form 3Pc, however, in a letter dated August 20, 1980, the Committee Treasurer indicated that she felt the allocation of expenditures was adequate.

Post-Primary Audit

As a result of statistical sampling and other review procedures conducted during the post-primary audit, areas identified in the Threshold audit and additional areas were identified as containing State expenditure allocation errors. Since only the limitations relating to the states of Iowa, New Hampshire and South Carolina were approached by the Committee, an extensive review was made of allocations to these States.

Although State expenditure allocation errors were noted for the states of Iowa and South Carolina, our extensive review indicated that the respective limitations were not exceeded. Noted below are areas in which allocation errors exist with respect to the state of New Hampshire.

1. Media Expense and Consultant Fees

On October 1, 1979, the Committee retained the services of a media consultant. The consultant's duties included assisting in the planning of all media advertising for the campaign and ordering the schedules for media advertising. In return for these services the consultant received a fee of \$3,500.00 per week, in lieu of the standard 15% agency commission on all time and space placed..

Our review of the expenditure records pertaining to the media placements and the related state allocations revealed that the net payments (published rates less commissions) had been allocated to states, but the related consultant fees had not been allocated.

In addition, our review disclosed that the Committee used an unusually low allocation percentage (6%) when allocating a portion of the Boston television costs to New Hampshire. According to television industry information, the allocable percentage to New Hampshire should be 13.3%. The Committee's allocation of 6% percent was taken from a study performed by an engineering consulting firm. The firm based this percentage on the ratio of the population by state contained within the area of a grade B contour ^{5/} for one (1) of the television stations considered reflective of the Boston/New Hampshire market. However, the population figures used were taken from the 1970 U.S. Census figures. This method of allocating the television costs to New Hampshire appears to be deficient for the following reasons:

(a) the Audit staff noted that as of the date of the engineering study performed for the Committee, the U.S. Census Bureau had published revised Census figures as of 1977.

(b) one of the states within the Grade B contour is Rhode Island. The Committee did not allocate any portion of the Boston television costs to Rhode Island, however it utilized a portion of Rhode Island's population (per the Grade B contour) in the base to determine the New Hampshire allocation percentage. Since the Rhode Island primary occurred on June 3, 1980, it is our opinion that additional information is needed from the Committee to support the inclusion of Rhode Island's population in the base.

5/ The Grade B contour is the area within which the majority of households can receive a good reception from a television station's signal as defined in the Federal Communications Commission's rules and regulations Sections 73.683 through 73.685.

(c) another state within the Grade B contour is Connecticut. It should be noted that current industry information (1979-1980, ADI Book) does not consider any portion of the State of Connecticut within the area of television signal penetration.

(d) for all other states/markets in New England (except Boston), the Committee utilized the current industry information (1979-80, ADI Book) cited above, for the allocation of media.

Assuming that the total population figures used by the Committee (if adjusted for revised 1977 Census figures) are, in fact, reflective of the voting age population in the respective states, we believe for the reasons noted above, the method utilized by the Committee produces an unreasonable allocation with respect to New Hampshire.

Based on our analysis, utilizing the 1979-1980 ADI Book figures, of the fees paid and the method of allocating placement costs to New Hampshire, the Audit staff has determined that an additional \$15,317.49 (fees and placement costs) should be allocated to New Hampshire.

Analysis of Committee Response

On December 22, 1980, the Committee submitted its response to the Commission approved interim audit report. In the response, the Treasurer stated:

"The Audit Team is of the opinion that the method used by the Committee to allocate media expenses in New Hampshire is not acceptable. Their argument relies heavily on the fact that the Grade B Contour method was not applied in other states. The audit team does agree, however, that the Committee did not approach the state expenditure limit in any other state. Since the implementation of the Grade B Contour method involved a cost factor, the Committee did not feel it necessary to apply the more expensive but detailed allocation method to states other than New Hampshire. In addition, media costs in other states were generally incurred after the New Hampshire primary.

It should be noted that prior to the implementation of the contour method, the general counsel of the committee contacted the Commission concerning media allocation methods. He was informed that although the method used in 1976 by many committees (13.3%) was acceptable, it was not the only method and that any reasonable method of allocation was acceptable. The Committee contracted a firm of engineers to do a scientific study of the New England media market. The Committee used this study as the basis of their allocation method and feels strongly that it is reasonable and therefore acceptable."

It is the opinion of the Audit staff that, in its response, the Committee has not demonstrated that its method of allocating media costs to New Hampshire is reasonable. Specifically, the Committee has not shown:

- that its use of 1970 U.S. Census figures versus revised Census figures as of 1977 is reasonable.

- the reasonableness of its use of the Grade B Contour for allocating the cost of Boston television to New Hampshire, while at the same time NOT using the respective Grade B Contour for allocating the cost of television advertisements emanating from the other New England states. The effect of the Committee's method is to preclude any allocation to New Hampshire for other than media broadcast from the Boston television stations. It should be noted that advertisements were broadcast from stations in several New England states, the signal penetration of which (per the respective Grade B Contour) reaches portions of New Hampshire.

- the reasonableness of not allocating the \$3,500.00 per week fee received by the consultant to the states. As noted above, this weekly fee was in lieu of the standard 15% agency commission on all time and space placed.

Recommendation

The Audit staff recommends that the Commission reaffirm its determination of November 18, 1980, that an additional \$15,317.49 in fees and placement costs be allocated to New Hampshire. Further, the Committee is to amend its state allocation schedule to reflect this adjustment within 30 days of receipt of this report.

2. Additional Adjustments to the Committee Allocated Totals for New Hampshire

a. Salary and Consulting Fees

The Threshold Report of the Audit Division made a procedural recommendation that the Committee allocate a portion of the salary or consulting fee for an individual's time while assigned and/or traveling within a particular state. During the Post Primary audit, there appeared to be no change in allocation of these salaries or consulting fees as a result of the Threshold finding.

Our review initially determined that an additional \$36,079.84 should be allocated to New Hampshire. The additional amount is based on our analysis of the amount of time spent by Committee staff in New Hampshire. In addition, costs associated with the operation of the Committee's New England Regional office were allocated by the Committee evenly to three New England states. The audit staff reviewed the volume of activity in each state and recalculated the allocable portions based on relative activity (amount of funds expended) in each state.

In its response, the Committee sets forth several considerations in support of its position that since it is impossible to know the percent (sic) of time the national staff spends on a particular state, that no allocation can be made.

"(1) The Treasurer often does not know the percentage of time an individual spends in a state until months after a primary. There would be no way to monitor daily travel schedules in the heat of a campaign and therefore no way to estimate the allocable expense.

(2) It is often the case that a member of the national staff may be in a particular state but in no way influencing the state primary anymore than if he/she were in the national headquarters. The candidate has very few available hours. In order to properly brief him, or discuss a sensitive issue, an individual must make himself available to the candidate wherever he may be.

(3) In a presidential campaign, planning plays a major role. The fact that part of the national staff may be with the candidate in state A, it is often the case that they are spending time planning for the primary in state B or C."

With respect to the Audit staff's reallocation of costs associated with the operation of the Committee's New England Regional office, the Committee's written response is silent on this matter.

It is the opinion of the Audit staff that our additional allocation is reasonable and with respect to salaries and consulting fees follows the principle set forth in Advisory Opinion 1979-73 approved by the Commission on January 10, 1980.

Subsequent to the Committee's response, we met with the Treasurer and reviewed additional information and Committee worksheets not previously provided concerning salaries and consulting fees. As a result of our review, we determined that the additional amount allocable to New Hampshire should be \$24,802.29.

Recommendation

The Audit staff recommends that the Commission make a final determination that an additional \$24,802.29 in staff salaries, and costs (overhead and salaries) associated with the operation of the Committee's New England Regional office be allocated to New Hampshire. Further, the Committee is to amend its state allocation schedule to reflect this adjustment within 30 days of receipt of this report.

Introduction to Findings II.B.2(b) through (e)

With respect to items 2(b) through 2(e) below, the Committee, in its written response, made several general statements, but did not specifically address the matters therein. The Committee's remarks were:

"With respect to New Hampshire, there are a number of disagreements. After analyzing the FEC findings the Committee has found \$35,000-\$45,000 of duplicated or post primary expenditures allocated to New Hampshire. In addition, another \$10,000-\$15,000 Maine and Vermont expenses have been considered New Hampshire. Another factor overlooked is the press reimbursements which dramatically affect the allocable expenditures. I will gladly forward my worksheets to the auditors for review and request that the Committee and the auditors sit down together and review New Hampshire expenditures so that we may at least agree to our disagreements. At that time the Committee will gladly adjust its records to reflect the changes."

The Audit staff met with the Treasurer during the week of January 5, 1981 to review additional information and Committee worksheets not previously provided regarding the New Hampshire state allocation. As a result of our review, findings 2(b), (c)(i), and (e) remain unchanged from the interim report while finding 2(d) was revised per the additional information. Further, a repayment has been incorporated in Finding 2(c)(ii).

b. Outstanding Debt

A review of the Committee's Outstanding Campaign Obligations as of July 31, 1980, identified outstanding debts totalling \$3,326.27 which were related to the Committee's campaign in New Hampshire. Payments were made on these debts totaling \$3,326.27.

c. Tour Related Disbursements

i) Our review of the Committee's allocation of tour costs revealed that disbursements, totaling \$10,516.54, had not been allocated to New Hampshire. 6/ The disbursements were associated with a 16 city New Hampshire tour, occurring on February 4 and 5, 1980, which included payments for hotel rooms, chartered buses, rental cars, and a representative portion of an individual's salary/consulting fee earned during the period of the tour. The hotel used by the Committee during the tour is located in Danvers, Massachusetts which is approximately 15 miles from the New Hampshire state line.

6/ The disbursements were made from the Massachusetts, New Hampshire, and National headquarters' accounts. Disbursements from the Massachusetts account were allocated to Massachusetts, certain disbursements from the National headquarters' account were also allocated to Massachusetts, but disbursements from the New Hampshire account were not allocated to New Hampshire.

The following is a recap of disbursements associated with the 16 city New Hampshire tour apparently originating from the hotel.

Hotel	\$ 5,005.49
Salaries/Consulting Fees	3,674.47
Concord Coach Lines (Two (2) Bus Charters)	1,246.70
Rental Cars	589.88
Total	<u>\$10,516.54</u>

ii) For the period February 10, 1980, through February 28, 1980, individuals associated with the Committee maintained rooms at the Sheraton Rolling Green Motor Inn (the hotel) located in Andover, Massachusetts which is approximately 10 miles from the New Hampshire state line.

The following is a recap of certain disbursements associated with tours apparently originating from the hotel.

Hotel	\$26,810.00
Salaries/Consulting Fees	24,346.37
Concord Coach Lines (Eight (8) Bus Charters)	6,846.95
Rental Cars	1,435.80
Gasoline	1,213.97
Total	<u>\$60,653.09</u>

Based on certain documentation supporting the above disbursements, (e.g., individual expense vouchers, invoices documenting charter bus routes, FEC schedules B-P (filed with the Committee by state offices), the Committee's tour manifest for the period 2/13/80 through 2/29/80, etc.), the Audit staff believes a substantial portion of the disbursements total noted above (c.ii) should be allocated to New Hampshire. ^{7/} Furthermore, six (6) of the eight (8) invoices supporting the bus charters did not show the tour routes and a determination of proper allocation could not be made.

In light of the fact that the Committee did not provide any additional information or worksheets concerning the above tour, the Audit staff has included this amount as allocable to the New Hampshire state limitation.

d. Other Vendor Payments

Our initial analysis of payments from the head-quarter's operating accounts to vendors for postage, polling, direct mailing, telephone, office supplies, etc., revealed that additional payments totaling \$76,819.12 should be allocated to New Hampshire.

^{7/} See footnote previous page

Subsequent to the Committee's response, we met with the Treasurer and reviewed additional information and Committee worksheets not previously provided concerning other vendor payments. As a result of our review, we determined that the additional amount allocable to New Hampshire should be \$25,329.92.

e. Miscellaneous

Various tests associated with our review of the Committee's allocation system resulted in the identification of an additional allocation of \$11,827.63, representing payments made (for miscellaneous expense reimbursements and supplies) related to New Hampshire campaign activity.

Recap of New Hampshire State Limitation

Amount per Committee	\$280,364.48
Finding II.B.1.	15,317.49
Finding II.B.2.a.	24,802.29
Finding II.B.2.b.	3,326.27
Finding II.B.2.c.i)	10,516.54
Finding II.B.2.c.ii)	60,653.09
Finding II.B.2.d.	25,329.92
Finding II.B.2.e.	<u>11,827.63</u>
Total Amount Allocable to New Hampshire per the Audit staff	\$432,137.71*
Less New Hampshire State Limitation	(294,400.00)
Amount in Excess of Limitation	<u>\$137,737.71</u>

Overall Recommendation (Finding II.B.(1) and (2))

It is the Audit staff's recommendation that the Committee amend its state allocation schedule to reflect the additional \$151,773.23 chargeable to the New Hampshire state limit within 30 days of receipt of this report. Further, it is recommended that the Commission make a final determination that the amount (\$137,737.71) in excess of the New Hampshire state limit be considered a non-qualified campaign expense and repayable to the U.S. Treasury (see finding III.B.1. for repayment discussion).

* The additional amount chargeable to New Hampshire is \$151,773.23 (\$432,137.71 less \$280,364.48).

C. Contributions Received after the Primary Election

Section 110.1(a)(1) of Title 11 of the Code of Federal Regulations states that no person (except multicandidate committees under section 110.2) shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election to Federal office which in the aggregate exceed \$1,000.

Section 110.1(a)(2) of Title 11 of the Code of Federal Regulations states that "with respect to any election" means -

(i) In the case of a contribution designated in writing for a particular election, the election so designated, except that a contribution made after a primary, caucus or convention, and designated for the primary election, caucus or convention shall be made only to the extent that the contribution does not exceed net debts outstanding from the primary election, caucus or convention.

(ii) In the case of a contribution not designated in writing for a particular election,

(A) For a primary election, caucus or convention, if made on or before the date of the election, caucus or convention, or

(B) For a general election if made after the date of the primary election.

Based upon 26 U.S.C. 9032.(6)(A), 11 C.F.R. 9032.6(b)(1) and 9033.5(c) the Commission determined that the primary election period for the candidate ended July 16, 1980, when the Republican Party nominated the candidate for the office of President of the United States. On July 31, 1980, the Committee filed a Statement of Net Outstanding Campaign Obligations which reflected a net surplus of \$2,514,000 for the primary election.

The Audit staff's review of deposits between July 17, 1980, and October 1, 1980, revealed that the Committee deposited contributions (dated after July 16, 1980) totaling \$85,946.47 (net of non-negotiable items) into its campaign depositories and, as of October 6, 1980, retained the contributions therein. According to Committee receipt processing personnel, no special treatment was given these contributions.

The Audit staff recommended in the interim report that within 30 days of receipt of this report the Committee should either:

a) refund the \$85,946.47 to the contributors and provide evidence of the refunds (i.e., front and back of each cancelled refund check) to the Audit Division;

b) dispose of the contributions for the purpose(s) outlined at 2 U.S.C. 439a and provide evidence of the disposal, such as that addressed in item a); or

c) notify the contributors, pursuant to 11 C.F.R. 9003.3 (a)(1)(iii), that the contributions will be deposited in the general election legal and compliance fund. If after such notification the contributors object to the funds being so used, or the contributors have already contributed \$1,000 (statutory limit) to the legal and compliance fund, the contributions should be refunded in the manner prescribed in item (a).

The Committee responded to the interim report on December 22, 1980. In the response, the Treasurer stated that "pursuant to 2 U.S.C. 439(a), Reagan for President has disposed of all contributions received after the date of nomination (emphasis added). This was accomplished by transferring the \$85,946.47, as well as an additional \$164,053.53, to the Presidential Transition Fund." The Treasurer provided a photocopy of the check.

Our audit work conducted in December, 1980, indicated that the Committee had received approximately \$322,617.39 (net) in contributions during the period 7/17/80 thru 12/19/80. Of this amount \$156,882.99 represented contributions dated 7/16/80 or before, while the remainder (\$165,734.40) represented contributions dated 7/17/80 or after. Therefore, it is our opinion that the Committee has properly disposed of the amount of contributions (\$165,734.40) which it could not retain given its surplus position on July 16, 1980. It should also be noted that while 11 C.F.R. 110.1(a)(2) requires the disposition of the \$165,734.40, in view of the fact that the Committee has a calculated residual after repayment to the U.S. Treasury in excess of \$1,800,000.00, the remainder (\$85,946.47) of the \$250,000 transferred is also permissible under 2 U.S.C. 439a.

Recommendation

With respect to the transfer of the \$250,000.00 to the Presidential Transition Fund, the Audit staff is of the opinion that the transfer is permissible under 2 U.S.C. 439(a), and recommends no further action.

D. Disclosure of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code (formerly 2 U.S.C. 434(b)(12)) requires disclosure of the amount and nature of debts and obligations owed by or to such political committee; and a statement as to the circumstances and conditions under which such debts or obligations were extinguished, and the consideration therefore.

Section 104.11(a) and (b) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first. Any loan, debt or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

1. Response to Threshold Audit Findings

The Audit staff noted a \$100,000 loan received from the Santa Monica Bank on September 6, 1979 for which the reported nature (details of the debt) on Schedule C-P consisted of only "Bank Loan". Additionally, the staff noted a letter of credit for which the Committee had not disclosed the \$30,000 initial increment.

The Committee did acknowledge the initial \$30,000 increment in a letter dated August 20, 1980. However, as of October 10, 1980, no information had been received concerning the nature of the bank loan.

2. Post-Primary Audit

a) Line of Credit

The Audit staff noted a line of credit established with Riggs National Bank. During the post-primary audit period the Committee had exercised and received \$4,320,000 in loans against the line of credit. As the loans were received, the Committee disclosed on the applicable Schedules A-P, Line 20:

"Loan - No Guarantor
Secured by Matching Funds;
Payable 6/30/80"

The review of Schedules C-P Line 13 of the applicable reports which contained the debts and obligations portion of the loans, revealed that the Committee did not disclose the nature of the obligations (details of the debt, collateral, if any, interest rate, etc.)

Moreover, an analysis of this matter performed subsequent to the Threshold Audit indicated that the candidate provided his conditional guaranty.

b) Accounts Payable

Our examination of the Committee's documents and disclosure reports, and a comparison thereof revealed that the Committee had been improperly reporting debts and obligations during the period February 1, 1980 through May 31, 1980.

Our testing indicated that debts and obligations were not properly disclosed on Schedule C-P for Line 13 with respect to the itemization of the obligation and the liquidation thereof. However, it was noted that these debts and obligations were paid and disclosed on the appropriate expenditure schedules.

The interim audit report, approved by the Commission on November 18, 1980, contained the following recommendations:

With respect to item 1), the Audit staff recommends that within 30 days of receipt of this report, the Committee file an amended report fully detailing on Schedule C-P Line 13 the nature of the Santa Monica Bank loan (Threshold audit finding).

For item 2a relating to the Riggs National Bank loans, it is recommended that within 30 days of receipt of this report, the Committee file an amended report(s) fully detailing on Schedule C-P, Line 13 the nature of these loans to include collateral interest rates, and endorsements (if any), for each loan exercised against the line of credit.

With respect to item 2b), the Audit staff recommends that since testing has given assurance that all recognized debts and obligations were liquidated, no amendments to Schedule C-P are required on an item by item basis. However, it is the Audit staff's recommendation that within 30 days of receipt of this report, the Committee submit a statement for the public record, signed by the Treasurer, indicating that all recognized debts and obligations have been liquidated as of a given reporting date and that commencing with the next regularly scheduled disclosure report, debts and obligations will be reported as required by the Act.

On December 22, 1980, the Committee presented the amendments noted above in response to the interim report.

Recommendation

Since the appropriate amendments have been filed, we recommend no further action.

E. Earmarked Contributions

Section 110.6(a) of Title 11 of the Code of Federal Regulations states that all contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

Section 110.6(c)(3) of Title 11 of the Code of Federal Regulations requires the intended recipient to disclose on his next report each conduit through which the contribution passed.

1. Response to Threshold Audit Findings

The Audit staff notified the Committee that the conduit(s) through which 49 earmarked contributions, totaling \$4,870.00, had passed had not been disclosed. The Audit staff recommended that an amendment be filed not later than August 6, 1980, to disclose the conduit(s). As of October 10, 1980, the Committee had not filed this amendment, although in a letter dated August 20, 1980, the Treasurer indicated that an amendment would be filed. The Treasurer also stated that the conduits were not disclosed because they were informed by a former Commission employee that disclosure of the conduit was unnecessary.

2. Post-Primary Audit

This finding includes matters noted in the Threshold audit period as well as those noted in the Post-Primary audit period. The Audit staff noted 134 earmarked contributions, totaling \$13,274.7 that were received and reported as though they were individual contributions (i.e., non-earmarked). As of October 10, 1980, the Committee had not disclosed on its reports the conduit(s) through which the contributions passed.

On December 22, 1980, the Committee filed the appropriate amendment in response to the recommendation contained in the interim audit report.

Recommendation

The Audit staff recommends no further action regarding this matter since the requested amendment has been filed.

F. Contributions Received From Non-Affiliated Committees

Section 434(b)(3)(B) of Title 2 of the United States Code (formerly 2 U.S.C. 434(b)(4)) requires disclosure of the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

1. Response to Threshold Audit Findings

The Audit staff concluded that 17 contributions totaling \$4,755.79 received from non-affiliated committees had not been itemized on the Committee's disclosure reports. The Audit staff recommended that an amendment be filed not later than August 6, 1980. The Committee filed the amendment on September 12, 1980, itemizing the contributions.

2. Post-Primary Audit

During the receipts review, the Audit staff noted 19 contributions, totaling \$8,018 received from non-affiliated committees which had not been itemized on the Committee's disclosure reports. Additionally, one (1) contribution for \$105, was incorrectly itemized at \$800.

The Committee also disclosed in memo entry form, as well as in unitemized receipts, a contribution of \$2,675 as an earmarked contribution. The contribution was received from a multi-candidate committee. Based on the documentation presented, this contribution does not meet the criteria for an earmarked contribution as defined in 11 C.F.R. 110.6(b) and should be disclosed as a contribution from a non-affiliated committee.

An amendment which adequately disclosed the aforementioned contributions from non-affiliated committees was filed with the Commission on December 22, 1980 in response to the interim audit report.

Recommendation

The Audit staff recommends no further action regarding this matter.

G. Disclosure of Refunds

Section 434(b)(3)(F) of Title 2 of the United States Code requires the disclosure of the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt.

The receipts review revealed that the Committee did not itemize eight (8) refunds totaling \$19,109.50 which exceeded, or when aggregated with other refunds from the same person within the calendar year were in excess of \$200, and incorrectly itemized a \$12,623 refund at \$18,623. In the Committee's report for September, 1980, the \$12,623 refund was corrected.

On December 22, 1980, the Committee filed an amendment itemizing the refunds as required.

Recommendation

Since the requested amendment has been filed, the Audit staff recommends no further action.

H. Other Income

Section 434(b)(3)(G) of Title 2 of the United States Code requires the disclosure of any person, who provides any dividend, interest, or other receipts to the reporting committee in an aggregate amount of value in excess of \$200 within the calendar year together with the date and amount. Additionally, 2 U.S.C. 431(11) defines the term "person" to include an individual, partnership, association, corporation, labor organization or any other organization or group of persons.

During the receipts review, the Audit staff noted that the Committee received \$1,809.44 in interest income from a time certificate of deposit, which was not itemized as required. The interest income represented approximately 29.1% of the total dollar amount of such receipts as of July 31, 1980.

The Assistant Treasurer stated that this receipt was inadvertently reported as an unitemized contribution and expressed a willingness to file an amended report. The Committee included in its report for September, 1980, the \$1,809.44 in interest income mentioned above.

On November 18, 1980, the Commission approved the Audit staff's recommendation that no further action is necessary on this matter.

I. Financial Activity Not Accurately Stated

Section 434(b)(1), (2) and (4) of Title 2 of the United States Code (formerly 2 U.S.C. 434(b)(1), (8) and (11)) requires disclosure of the amount of cash on hand at the beginning of the reporting period; and the total sum of all receipts and expenditures.

1. Response to Threshold Audit Findings

The Audit staff noted that (a) reported receipts were understated \$11,602.16, (b) reported expenditures were understated \$37,404.13 and (c) ending cash at December 31, 1979 was overstated \$25,801.97. This was primarily caused by the untimely receipt of expenditures information from state offices and accounts. In addition, one (1) set of bank statements and cancelled checks was not available for review at the time of the Threshold audit and the activity for that account could not be accounted for. The recommendation contained in the Threshold Audit report stated that the bank records be made available not later than August 6, 1980. On October 3, 1980, the records were made available, however, the activity in the account did not have a material bearing upon the financial activity noted above. In addition, the Audit staff noted that a substantial amount of the above activity was included in the 1980 disclosure reports. Procedural recommendations were made in the Threshold audit report concerning the time lag in disclosing expenditure activity relating to state office operations.

2. Post-Primary Audit

The reconciliation of the Committee's bank records to its disclosure reports covering the period 1/1/80 thru 7/31/80, indicated that (a) reported opening cash was understated \$1,939.29, (b) reported receipts were understated \$22,843.67, (c) reported expenditures were understated \$160,222.52 and (d) reported closing cash on July 31, 1980, was overstated \$135,439.56. It appears that the differences were primarily caused by including as cash on hand the value of funds transferred from national headquarters bank accounts to various state office accounts until receipt of expense reports from the state offices. Thus, these funds were classified as "unspent" by the Committee because, as of July 31, 1980, the expenditure documentation/expense reports had not been received from the state offices and accounts for inclusion in the disclosure reports. It is apparent that the Committee did not institute additional control procedures to ensure timely receipt of expenditure information from state offices, as recommended in the Threshold audit report.

The Committee disclosed on its reports for the months of August and September, 1980, receipts of \$10,489.64 and expenditures of \$139,192.25 relating to the time lag problem mentioned above.

Further, the Committee substantially disclosed the remainder of the receipts and expenditures on its reports covering the period October 1, 1980 through November 24, 1980.

Recommendation

In light of the fact that disclosure has been effected, the Audit staff recommends no further action.

J. Campaign Tours

Section 9033(a)(1) and (2) of Title 26 of the United States Code requires candidates who receive payments under Section 9037 to obtain and furnish to the Commission any evidence it may request of qualified expenses, and keep and furnish to the Commission any records, books and other information it may request.

Section 432(c)(5) of Title 2 of the United States Code states, in part, that the Treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount and purpose of the disbursement.

The Audit staff noted that the Committee charges 150% of first class air fare for each media individual and approximately 100% of first class for United States Secret Service Agents traveling on Committee chartered aircraft. The 50% charge is added to cover the ground services and facilities (i.e., ground transportation, meals, telephone service, typewriters, etc.) which according to the Committee, are made available to these persons traveling on Committee chartered aircraft. We were unable to determine the ground costs associated with the Committee tours #4 through #26. According to the Committee, these costs were paid by the Committee's state offices, and documentation in support of the costs could not be readily identified. However, for tours 14, 16, 17, 18, 19, 20, and 26, the Committee billed the media and United States Secret Service for reimbursement equal to or substantially in excess of the actual total cost of the charter air transportation to be paid by the Committee for these tours.

Absent Committee demonstration to the contrary, any income realized in conjunction with the tours may have an impact on expenditure limitations discussed in Finding II.A.2. and III.B.2.

On November 18, 1980, the Commission approved the recommendation of the Audit Division contained in the interim report that within 30 days of receipt of the report the Committee review the state office records and identify the ground costs associated with tours #4 through #26. Further, the Committee was requested to provide the Audit staff with copies of documentation and working papers (inclusive of bank account and check number, date, amount, payee, and associated tour) supporting the associated ground cost for each tour. Upon receipt of the documentation and working papers, the Audit staff would review the reasonableness of applying reimbursements received based on the 150% charge as a reduction of expenditures subject to the limitation.

The Committee has not complied with the recommendation as stated, however, on December 22, 1980, the Committee responded that:

"Until September of 1980, presidential campaign committees were not required to keep separate records of ground costs to press and secret service. The Committee billed the press 150% as has been the practice of a number of presidential committees in 1976 and again in 1980. In the threshold audit no mention was made by the auditors that separate records of tour expenses would be required.

Now, six months after the primary election has ended, the auditors request that the Committee supply detailed ground transportation costs to prove that no profit was made on 7 out of 26 tours. They agree, however, that the Committee did not make a profit on the other 19, apparently even taking a loss on the 19 tours. Considering that:

- (1) regulations required no such details of records during that period;
- (2) numerous campaigns have in the past used 150% as a rule of thumb, and the Commission has never questioned the reasonableness of the practice;
- (3) the apparent indication that the Committee took a loss on 19 out of 27 tours;
- (4) the audit team has found no reason to believe that a profit has been made but has instead told the Committee to prove none has.

The Committee feels the Audit Team is not justified in requesting a detailed study of tour expenses in this after-the-fact manner to prove something that seems apparent. It should be kept in mind that when the Committee agreed to supply records to the Federal Election Commission, it was done so with the understanding that the law was premised on reasonableness, otherwise it would violate the due process clause of the 5th Amendment."

It should be noted that the Audit staff disagrees with the Committee's statement that "They agree, however, that the Committee did not make a profit on the other 19, apparently even taking a loss on the 19 tours." Attachment I is a chart of tours #4 through #26 which details the net profit or (loss) to the Committee based solely on air charter costs.

Based on the above analysis of tours #4 through #26, the Committee's maximum net profit realizable totals \$142,990.78. Therefore, it is the opinion of the Audit staff that the operating expenditures subject to limitation, as reported, are/will be understated by \$142,990.78 when all reimbursements are received.

According to Committee tour records, as of December 20, 1980, \$10,986.00 in billings remain outstanding.

Recommendation

Since the Committee has failed to identify the ground costs associated with the tours, the Audit staff recommends that the Commission determine \$142,990.78 be added to the Committee's expenditures subject to the limitation of 2 U.S.C. 441a(b)(1) (A) as adjusted by 2 U.S.C. 441a(c) (See Finding II.A.2.). Further, within 30 days of receipt of this report the Committee is to file an amended report to reflect this adjustment.

III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Excessive Payments From the Matching Payment Account

Section 9038(b)(1) of Title 26, United States Code, states that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall repay to the Secretary an amount equal to the amount of excess payments.

Further, 11 C.F.R. 9034.1(a) states, in part, that a candidate who has become ineligible under 11 C.F.R. 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 C.F.R. 9034.5. 8/

8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for president is the end of the matching payment period for a candidate seeking the presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Sections 9033.5(a) or (b). Since Ronald Reagan was nominated as the Republican Party's presidential candidate at its national convention on July 16, 1980, that date is the date of Mr. Reagan's ineligibility.

1. Payment of Matching Funds After the Date of Ineligibility

As noted above, the candidate's date of ineligibility was July 16, 1980. On July 17, 1980, the Committee received a matching fund payment of \$179,292.63. The Statement of Net Outstanding Campaign Obligations ("NOCO") which the Committee submitted on July 31, 1980, reflected a surplus position of \$2,514,000. Since the candidate did not have net outstanding campaign obligations (debts), and the Committee received payment after the candidate's ineligibility date, the matching funds received (\$179,292.63) constituted an excessive payment which is repayable to the U. S. Treasury pursuant to 26 U.S.C. Section 9038(b)(1).

On November 18, 1980, the Commission approved the interim audit report which recommended that \$179,292.63 for the payment described above was repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(1). On December 22, 1980, the Committee presented a check, a portion of which represented the repayment of the amount noted above.

Amount Repaid (Item A-1) \$179,292.63.

2. Excessive Payment Made Prior to Candidate's Date of Ineligibility

On July 3, 1980, a certification for payment of \$922,128.24 was made to the U.S. Treasury which resulted in the Committee's receipt of a \$922,128.24 payment from the U.S. Treasury on this same date. The amount certified for payment was determined by applying a holdback percentage of 5.2% to the amount requested ($\$973,000.16 \times 94.8\% = \$922,404.15$ less miscellaneous prior period adjustments of \$275.91 = \$922,128.24). The holdback percentage is based on the average matchable percentage of the Committee's four prior submissions. In this instance, the holdback percentage when compared to the actual matchable percentage was understated by 2.15% which resulted in an overpayment of \$20,900.83 (i.e., actual matchable percentage 92.65 less 94.8%, percentage applied).

An adjustment of -\$20,900.83 was applied to the submission received on July 14, 1980 to arrive at the amount paid (\$179,292.63) on July 17, 1980. In other words, on July 3, 1980, the Committee received \$20,900.83 in matching funds over and above the amount to which it was entitled, based on the matchable contributions submitted.

The Committee was in a surplus position (minimum surplus amount of \$2,514,000 per Committee's NOCO statement) on July 16, 1980. Therefore, the adjustment of -\$20,900.83 applied to the submission of July 14, 1980, is viewed as an overpayment in the same manner as the \$179,292.63 discussed in Item A-1 above.

On November 18, 1980, the Commission approved the interim audit report which recommended that \$20,900.83 for the payment described above was repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(1). On December 22, 1980, the Committee presented a check, a portion of which represented the repayment of the amount noted above.

Amount Repaid (Item A-2) \$ 20,900.83.

B. Apparent Non-Qualified Campaign Expenses

1. Expenditures in Excess of State Limitation

As previously reported in Findings II.B.1 and 2 the Audit staff identified expenditures in excess of the state limitation for New Hampshire totaling \$137,737.71.

On November 18, 1980, the Commission approved the recommendation of the Audit staff that the Committee be requested to show within 30 days of receipt of the interim audit report that the state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee response to the interim report and made revisions to the additional amounts allocable to the New Hampshire state limit.

Recommendation

The Audit staff recommends that these expenditures totaling \$137,737.71 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report. Further, the Committee is afforded 30 days from receipt of this report to present legal or factual materials to show that a repayment is not required (see 11 C.F.R. 9038.2(b)).

2. Expenditures in Excess of the Overall Limitation

As previously noted in Finding II.A.2., the Audit staff identified expenditures which appeared to be in excess of the overall limitation for the period 2/26/79 through 8/31/80 totaling \$232,566.12 in the interim report.

On November 18, 1980, the Commission approved the recommendation of the Audit staff that the Committee be requested to show within 30 days of receipt of the interim audit report that the overall expenditure limit had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee response to the interim report and although a reclassification of certain expenditures subject to the limit to the exempt legal and accounting category was filed by the Committee, it is our opinion that the Committee has not adequately demonstrated that it did not exceed the overall limitation contained at 2 U.S.C. 441a(b)(1)(A).

Recommendation

Therefore, it is recommended that the value (\$77,387.82) of the expenditures in excess of the overall limitation be considered non-qualified campaign expenses, and be repaid in full to the U. S. Treasury within 90 days of receipt of this report. Further, the Committee is afforded 30 days from receipt of this report to present legal or factual materials to show that a repayment is not required (see 11 C.F.R. 9038.2(b)).

C. Determination of Net Outstanding Campaign Obligations-Surplus

Section 9038(b)(3) of Title 26, United States Code, states, in part, that after all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's account shall be promptly repaid to the matching payment account.

In addition, Section 9038.3(c)(1) of Title 11, Code of Federal Regulations provides that if on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 C.F.R. 9034.5 reflect a surplus, the candidate shall within 30 days of the ineligibility date repay to the Secretary of the Treasury an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

1. Calculations of Surplus and 26 U.S.C. 9038(b)(3) Repayment Amount

The initial NOCO statement filed on July 31, 1980, presented the financial position as determined by the Committee with respect to assets, liabilities and surplus funds as of July 17, 1980. In addition, total matching funds received, total deposits as described at 11 C.F.R. 9038.3(c)(2), payback % and an estimated payback amount were listed which were also compiled by the Committee. During audit fieldwork conducted in August and September 1980, the Audit staff reviewed the Committee's books and records to verify the figures on the Committee's NOCO statement. The Audit staff prepared a revised NOCO statement. Based on audit work conducted as of October 10, 1980, utilizing the records available, the Audit staff concluded that as of July 16, 1980, the Committee's assets exceeded liabilities (obligations) by at least \$3,063,114.67. Further, it was noted that revisions would be made to this surplus figure upon receipt of additional information relating to certain assets of the Committee.

The Audit staff computed a figure for net deposits as defined at 11 C.F.R. 9038.3(c)(2) and total matching funds received. Adjustments were made to both figures in view of the \$200,193.46 recommended recovery of matching funds discussed at Item III A-1 and A-2.

On November 18, 1980, the Commission approved the Audit staff's recommendation that, absent a showing to the contrary within 30 days of receipt of the interim audit report, that \$1,033,353.99 was repayable to the U.S. Treasury in accordance with 26 U.S.C. 9038(b)(3). This amount represented the pro rata portion of Federal funds (based on audit work performed as of October 10, 1980), contained in the Committee's surplus (\$3,063,114.67) on the Candidate's date of ineligibility.

Analysis of Committee Response

On December 22, 1980, the Audit staff received the Committee's response with respect to the calculation of surplus and the associated amount to be repaid to the U.S. Treasury. The Committee presented a revised NOCO statement, as of July 16, 1980, and a check representing the amount which the Committee determined as repayable to the U.S. Treasury. The portion of the check relating to the surplus repayment amounted to \$754,044.67.

The Treasurer stated in the response that the Committee did not agree with the "Audit Team's" NOCO statement, but, as noted above, has chosen to repay the Treasury at this time an amount it has determined is payable.

Subsequent to the receipt of the revised NOCO statement, the Audit staff met with the Assistant Treasurer to discuss the various differences resulting in the lower repayment amount. With the exception of the Accounts Receivable figure, agreement was reached on the remainder of the components making up the Committee's financial position as of July 16, 1980. (see Attachment II).

As shown on Attachment II, the Committee disagrees with the inclusion of \$156,882.99 in individual and political committee contributions dated July 16, 1980 or before, but received July 17, 1980 or after. The Audit staff has included the value of these contributions based upon our interpretation of 11 C.F.R. Section 110.1(a)(2) which states that "with respect to any election" means -

(i) In the case of a contribution designated in writing for a particular election, the election so designated, except that a contribution made after a primary, caucus or convention, and designated for the primary election, caucus or convention shall be made only to the extent that the contribution does not exceed net debts outstanding from the primary election, caucus or convention.

(ii) In the case of a contribution not designated in writing for a particular election,

(A) For a primary election, caucus or convention, if made on or before the date of the election, caucus or convention, or

(B) For a general election if made after the date of the primary election.

In our opinion, the contributors' checks which were dated on or before the date of the nomination (July 16, 1980) were contributions made for the primary election and therefore includable as assets of the primary for purposes of calculating net outstanding campaign obligations (see Finding II.C. for a discussion of contributions dated and received after the primary election (July 16, 1980)).

Based on our analysis of the Committee's books and records, the amount subject to repayment in accordance with 26 U.S.C. 9038(b)(3) is shown below.

<u>total matching funds received</u>	x	surplus =	26 U.S.C. 9038(b)(3)
<u>total deposits</u>			repayment amount
\$7,094,268.10	x	\$2,818,512.61	= \$952,879.92
<u>\$20,984,024.22</u>			

As stated above, the Committee has repaid \$754,044.67, leaving a balance due the U.S. Treasury of \$198,835.25.

Recommendation

It is the recommendation of the Audit staff that the Committee be required to repay \$198,835.25 to the U.S. Treasury within 90 days of receipt of this report pursuant to 26 U.S.C. 9038(b)(3). Further, the Committee is afforded 30 days from receipt of this report to present legal or factual materials to show that a repayment is not required (see 11 C.F.R. 9038.2(b)).

Repayment Summary

Finding III.A.1.	Payment of Matching Funds After the Date of Ineligibility	\$179,292.63
Finding III.A.2.	Excessive Payment Made Prior to Candidate's Date of Ineligibility	20,900.83
Finding III.B.1.	Expenditures In Excess of State Limitation	137,737.71
Finding III.B.2.	Expenditures In Excess of the Over- all Limitation	77,387.82
Finding III.C.1.	Repayment of Surplus Funds	<u>952,879.92</u>
	Subtotal-Recommended Repayment	\$1,368,198.91
	Less Repayment made for Finding III.A.1.	(179,292.63)
	Less Repayment made for Finding III.A.2.	(20,900.83)
	Less Partial Repayment made for Finding III.C.1.	(<u>754,044.67</u>)
	Total Recommended Repayment Remaining	<u>\$413,960.78</u>

Pursuant to Section 9038.2 of Title 11 of the Code of Federal Regulations the amount in the above Repayment Summary (\$413,960.78) is repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing, within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

9/ This amount is subject to change.

D. Valuation of Committee Assets

1. Assets Purchased by Reagan For President General Election Committee *

In June, 1980, the Reagan For President General Election Committee ("the GEC") was invoiced by the Committee for \$10,668.64 representing the "present worth" (as determined by the Committee) of office furniture and machines purchased by the GEC for use in the general election campaign. Payment for the goods was made on October 3, 1980, by check drawn on a GEC account.

The Audit staff reviewed the invoice and believes the valuation is deficient. The Commission's regulations at 11 C.F.R. 100.7(a)(1)(iii)(A) and (B) may permit a valuation similar to that utilized by the Committee, however,

"if goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contributions and the amount charged the political committee."

"Usual and normal charge" means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution (emphasis added, see 11 C.F.R. 100.7(a)(1)(iii)(B)).

In this instance, the GEC is precluded from accepting a contribution from the Committee in view of the fact that the GEC received the full entitlement from the Fund (\$29,440,000) and the contribution (the usual and normal charge for the goods, less amount paid) was not specifically solicited for the candidate's legal and accounting compliance fund (see 11 C.F.R. 9003.2(a)(2), proposed at the time of the transaction). Rather the equipment is being utilized for and was paid from the GEC operating account containing federal funds.

It is the opinion of the Audit staff that the GEC has accepted an in-kind contribution from the Committee equal to the difference between the "usual and normal charge" for such goods and the "present worth" purchase price paid for the goods by the GEC. The Treasurer of the Committee stated that the valuation method produces a reasonable approximation of the "present worth" of the equipment.

* On August 5, 1980, the name of the general election committee was changed to Reagan For President General Election Committee and/or Reagan Bush Committee in an amendment to the Committee's Statement of Organization filed with the Commission.

It is the Audit staff's opinion that the Committee's "present worth" valuation method produces an unreasonably low valuation. The method "forces" a zero value on the items as of November 1, 1980, merely four (4) months after being acquired by the GEC and only 18 months after acquisition by the Committee. Hence, it is evident that the "present worth" valuation (i.e. 18 month straight line depreciation) of the items differs to a significant degree from the "usual and normal charge" as defined at 11 C.F.R. 100.7(a)(1)(iii)(B).

On November 18, 1980, the Commission approved the Audit staff's recommendation that within 30 days of receipt of this report, the Committee be required to prepare a valuation of the items based on the "usual and normal charge" for such goods. The amount of the contribution, as determined by the Commission, should be reimbursed to the Committee by the GEC to obviate the acceptance of a contribution on the part of the GEC and the making of a contribution by the Committee. Further, the Committee is to provide the basis and associated working papers for the Audit staff's review.

On December 22, 1980, the Committee submitted a revised valuation. The Audit staff reviewed the valuation and after adjustments to correct quantities and purchase prices for certain items listed, it is our opinion that a valuation of \$50,260.92* is reasonable.

In addition, as a result of information developed during follow-up audit fieldwork in December, 1980, a valuation for capital assets on hand at 7/16/80 was calculated. The value (\$51,378.07) is included in the NOCO calculation at Attachment II.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report the Committee invoice the GEC \$39,592.28 (\$50,260.92 less \$10,668.64 payment received) and obtain said payment to obviate the acceptance of a contribution on the part of the GEC and the making of a contribution by the Committee. Further, the Committee should within the 30 day period submit documentation (copy of invoice) to the Audit staff and disclose the said payment on its next regularly scheduled report.

* The value placed on the items by the Committee amounted to \$45,254.12.

2. Committee Assets Utilized by the GEC Without Compensation

In conjunction with our review of the Committee's NOCO statement, several items were noted which were apparently being used by the GEC in connection with the candidate's general election campaign. These items included: two (2) postage machines, 12 electronic communication devices, one (1) word processor, one (1) mail opening machine and an electric message sending device. The purchase price of these items is at least \$28,566.88 and these items were apparently purchased during the period March, 1979 through June, 1980. These items were discussed with the Treasurer of the Committee and she agreed to ascertain whether or not these items were being used by the GEC and if so, to invoice the GEC an amount for the usage/value of such items.

On November 18, 1980, the Commission approved the recommendation of the Audit staff that the Committee place a value on these goods and bill the GEC accordingly to preclude the acceptance of a contribution by the GEC and the making of a contribution by the Committee. The Committee placed a reasonable value on the goods and/or agreed to the classification as capital assets as of 7/16/80. The valuation and disposition of these items are discussed at Finding III.D.1 above.

3. In-kind Contribution to the Reagan For President General Election Compliance Fund *

Our review of the Committee's assets revealed that a portion of the office furniture and machines used by the Committee during the Primary campaign was transferred to the GEC Compliance Fund for use during the general election campaign. The Committee did not disclose the transfer on its Report of Receipts and Expenditures nor did the GEC Compliance Fund disclose the receipt. The Committee, pursuant to our request, was to prepare a listing of the equipment transferred to the GEC Compliance Fund. It was noted that in all likelihood, the entire value of the equipment might not be viewed as solely to insure compliance with the Act and therefore not a permissible contribution in its entirety (see 11 C.F.R. 9003.3(a)(2)). It was requested that the Committee obtain from the GEC a breakdown showing compliance vs. non-compliance usage for this equipment. For example, if the GEC's accounting section were utilizing all of the equipment transferred, a breakdown of 85% compliance and 15% non-compliance might exist. If this were the case, it would be necessary for the GEC to reimburse the Committee for an amount equal to the pro rata portion of the value (based on "usual and normal" charge) used for non-compliance activity. Such reimbursement would have to be made from the GEC federal funds operating account and charged to the expenditure limitation contained in 2 U.S.C. 441a(b)(1)(B).

* On August 5, 1980, the name of the Reagan For President General Election Compliance Fund was changed to Reagan For President General Election Compliance Fund and/or Reagan/Bush Compliance Fund in an amendment to the Committee's Statement of Organization filed with the Commission.

The recommendation in the interim audit report provided that the Committee place a value on the equipment transferred equal to the "usual and normal" charge and disclose the value as an in-kind contribution in its disclosure report. Further, reimbursement would have to be requested from the GEC for the value of the portion of equipment used for non-compliance purposes. The reporting and reimbursement, if any, would have to occur within 30 days of receipt of the interim report.

The Committee did not address this matter in its written response to the interim audit report. However, the Audit staff has been able to place an estimate on the value of goods apparently comprising the in-kind contribution to the GEC Compliance Fund. Absent a showing to the contrary by the Committee, we feel that a value of \$4,915.86, representing calculators and filing cabinets, is reflective of the value of the in-kind contribution. Preliminary agreement has been reached with the Committee regarding this evaluation.

Recommendation

It is recommended that the Committee disclose the value of the in-kind contribution on its next regularly scheduled report and advise the GEC Compliance Fund accordingly.

4. General Election Campaign Expenditures

a. Our examination of Committee expenditure records disclosed certain disbursements relating to travel outside the United States for which the purpose of the trips may be considered "in connection with" the general election. The trips occurred between May 30, 1980, and July 5, 1980, and the cost was \$5,230.29. The treasurer stated that the trips were made to enhance foreign policy positions. However, due to the timing of the trips the treasurer was not certain if they related to the primary or general election campaign, but indicated that either position could be arguable.

b. During the course of review the Audit staff noted eight (8) expenditures or portions thereof, totaling \$26,969.01, which appeared to benefit the general election campaign. The disbursements occurred between June 30, 1980, and September 8, 1980, for purposes relating to travel, individual moving expenses, moving expenses related to the relocation of the Committee's National Headquarters from Los Angeles, California to Arlington, Virginia in June, 1980, and office supplies.

It should be noted that Section 9003.4(b)(4) (i) of Title 11, Code of Federal Regulations provides that;

a candidate who has received federal funding under 11 CFR Part 9031, et seq., may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

Further, Section 9003.4(c) of Title 11, Code of Federal Regulations states, in relevant part, that;

amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenses permitted under 11 CFR 9003.4(a) shall be deposited in a separate account used only for such expenses.

Although, these payments were made directly from the Committee's primary election accounts, it was our opinion in the interim report that since the Candidate was in a surplus position on his date of ineligibility, the transactions may be viewed as loans to the Candidate's general election committee and thereby treated in accordance with 11 C.F.R. 9003.4(b)(4)(i) cited above.

On November 18, 1980, the Commission approved the Audit staff's recommendation in the interim audit report that absent a showing to the contrary (i.e., a written explanation from the Treasurer that demonstrates to the Commission's satisfaction that the disbursements were, in fact, "in connection with" the primary election and not "in connection with" the general election), it would be necessary for the Committee to prepare an invoice to and obtain a reimbursement from the Candidate's general election committee, which would have precluded the applicability of 26 U.S.C. 9003(b), for the value of the disbursements (\$32,199.30) noted in a. and b. Evidence of the transaction (a copy of both sides of the cancelled check) was to have been provided to the Audit staff within 30 days of receipt of the interim report.

The Committee in its response to Finding D-4(a) stated that it was of the opinion that the expense of the European trips are primary expenditures. It was further stated that the trips were planned and taken prior to the date of the convention and were therefore properly paid by Reagan for President.

In responding to Finding D-4(b), the Committee requested an itemization concerning the \$26,969.01 in expenses apparently made in relation to the general election. The Treasurer also stated that upon review of the invoices the Committee will make the appropriate transfer of moneys. An itemization of the expenditures is included at Attachment III; however, it should be noted that the Committee was informed of these items and provided a listing comprising 7 of the eight items, totalling \$11,681.61 at the exit conference conducted on October 24, 1980.

Further, two additional expenditures totalling \$417.57, were identified during our review conducted in December 1980 which appear to relate to the General election campaign. An itemization of these expenditures is also included on Attachment III.

Recommendation

With respect to 4(a), it is recommended that no further action is required. The Committee's response appears to support its position that the expenses were made in relation to the Primary campaign.

With respect to 4(b), it is recommended that the Committee prepare an invoice to and obtain a reimbursement from the Candidate's general election committee, which will preclude the applicability of 26 U.S.C. 9003(b) for the value of the disbursements - \$27,386.58* (\$26,969.01 + \$417.57) noted above. Evidence of the transaction (a copy of both sides of the cancelled check) is to be provided to the Audit staff within 30 days of receipt of this report. Further, the Committee is afforded 30 days to demonstrate that these expenditures were, in fact related to the Primary campaign.

E. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on October 10, 1980 and December 31, 1980, for further consideration.

* Included in this amount is an expenditure for \$15,287.40 made prior to the Candidate's date of ineligibility which is included as an accounts receivable for the purpose of calculating the surplus repayment amount at Finding III.C.1.

ATTACHMENT I

Schedule to Support Tour Finding II. 1

TOURS 4 thru 26

TOUR NUMBER	1 # RFP	2 # MEDIA	3 # US\$S	4 Amount PRESS	5 Billed US\$S	6 Amount of Expected Reimbursement	7 Charter Cost of AIR TRANSPORTATION	8 TOUR	9 % of RFP ON TOUR	10 ACTUAL COST TO CMTE (COL. 7-6)	11 PRO-RATA COST FOR RFP STAFF	12 MAXIMUM NET INCOME (LOSS) REALIZABLE
4	105	126	72	32,502.50	12,430.00	44,932.50	65,925.17	4	35%	20,992.67	23,073.81	2,081.14
5	64	88	33	12,965.50	3,454.00	16,419.50	37,128.93	5	35	20,709.43	12,995.13	(7,714.30)
6	66	88	46	22,065.00	7,140.00	29,205.00	47,047.84	6	33	17,842.84	15,525.79	(2,317.05)
7	96	174	55	26,878.00	5,611.00	32,489.00	42,964.41	7	30	10,475.41	12,889.32	2,413.91
8	58	80	36	11,728.00	3,994.00	15,722.00	46,730.28	8	33	31,008.28	15,420.99	(15,587.29)
9	36	80	35	13,626.00	3,373.00	16,999.00	22,046.80	9	24	5,047.80	5,291.23	243.43
10	81	153	72	29,175.50	10,374.00	39,549.50	54,903.17	10	26	15,353.67	14,274.82	(1,078.85)
11	87	173	109	29,577.58	10,829.00	40,406.58	74,345.11	11	24	33,938.53	17,842.83	(16,095.70)
12	70	122	48	13,593.00	3,856.00	17,449.00	28,878.16	12	29	11,429.16	8,374.67	(3,054.49)

Schedule to Support Tour Finding II. L

TOURS 4 thru 26

TOUR NUMBER	1 # RFP	2 # MEDIA	3 # US\$S	4 Amount PRESS	5 Billed US\$S	6 Amount of Expected Reimbursement	7 Charter Cost of AIR TRANSPORTATION	8 TOUR	9 % of RFP ON TOUR	10 ACTUAL COST TO CMTE (COL. 7-6)	11 PRO-RATA COST FOR RFP STAFF	12 MAXIMUM NET INCOME (LOSS) REALIZABLE
										12,729.36	12,729.34	(.02)
13	160	380	134	32,529.55	7,780.00	40,309.55	53,038.91	13	24			
14	113	353	111	62,087.59	14,697.00	76,784.59	60,600.14	14	20	(16,184.45)	12,120.03	28,304.48
15	98	229	82	25,112.00	6,354.00	31,466.00	34,888.21	15	24	3,422.21	8,373.17	4,950.96
16	60	147	48	37,258.00	8,736.00	45,994.00	44,227.56	16	24	(1,766.44)	10,614.61	12,381.05
17	104	286	109	60,231.50	17,699.00	77,930.50	58,284.58	17	21	(19,645.92)	12,239.76	31,885.68
18	199	393	176	62,374.50	22,666.00	85,040.50	74,569.31	18	26	(10,471.19)	19,388.02	29,859.21
19	191	399	167	60,933.50	17,830.00	78,763.50	61,991.32	19	25	(16,772.18)	15,497.83	32,270.01
20	135	335	114	59,933.00	14,549.00	74,482.00	58,978.60	20	23	(15,503.40)	13,565.08	29,068.48
21	71	168	55	28,384.50	6,537.00	34,921.50	38,551.18	21	24	3,629.68	9,252.28	5,622.60
22	44	112	47	10,495.50	3,437.00	13,932.50	22,715.67	22	21	8,783.17	4,770.29	(4,012.88)
23	54	110	65	27,406.00	11,935.00	39,341.00	48,464.27	23	24	9,123.27	11,631.42	2,508.15
24	13	24	11	6,360.00	2,332.00	8,692.00	10,523.82	24	27	1,831.82	2,841.43	1,009.61
25	41	51	38	17,539.50	8,017.00	25,556.50	35,354.45	25	32	9,797.95	11,313.42	1,515.47
26	24	35	12	23,152.50	5,292.00	28,444.50	29,859.58	26	34	1,415.08	10,152.26	8,737.18
											<u>142,990.78</u>	

**REAGAN FOR PRESIDENT COMMITTEE
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
AS OF July 16, 1980**

(PREPARED BY AUDIT STAFF)

Assets

Cash On Hand 7/16/80	\$ 3,728,668.41	
Loans Receivable	170,000.00	
Accounts Receivable	506,041.50 *	
Accrued Interest Receivable	8,033.29	
Capital Assets	<u>51,378.07</u>	
Total Assets	<u>\$ 4,464,121.27</u>	<u>\$ 4,464,121.27</u>

Obligations/Liabilities

Accounts Payable for Qualified Campaign Expenses	\$ (1,562,956.48)	
Estimated Winding Down Costs 8/15/80 to Termination	<u>(82,652.18)</u>	
Total Obligations	<u>\$ (1,645,608.66)</u>	<u>\$ (1,645,608.66)</u>
Net Outstanding Campaign Obligations-Surplus		<u>\$ 2,818,512.61</u>

* Includes \$156,882.99 in contributions dated 7/16/80 or before, but received 7/17/80 or after. The Committee does not feel that the value of these contributions should be categorized as an asset as of 7/16/80.

Expenses Paid by Primary Campaign
Which Appear To Relate to General Election Campaign

<u>Payee Classification</u>	<u>Purpose</u>	<u>Check Date</u>	<u>Check #</u>	<u>Check Amount</u>	<u>General Election Portion</u>
Individual	Expense Reimbursement for Hotel Room	7/25/80	590	\$ 100.00	\$ 100.00
Commercial Vendor	Office supplies ordered June-July 1980	7/31/80	813	7,654.72	6,889.25 (90% General, 10% Primary)
Political Committee	Printing of literature	8/6/80	917	1,086.74	1,086.74
Commercial Vendor	Office supplies ordered June-July 1980	8/21/80	1124	3,137.35	2,823.62 (90% General, 10% Primary)
Individual	Moving Expense Cal-D.C.	8/21/80	1140	334.00	334.00
Individual	Moving Expense Cal-D.C.	8/21/80	1150	334.00	334.00
Individual	Expense Reimbursement 8/29/80 trip D.C. to Maine	9/8/80	1358	114.00	114.00
Commercial Vendor	Moving RFP office from Cal to D.C.	6/30/80	5972 *	<u>15,287.40</u>	<u>15,287.40</u>
Subtotal				\$28,048.21	\$26,969.01
Individual	Moving Expense Cal to D.C.	10/8/80	1481	344.00	344.00
Telephone Company	Telephone Expense August 1980	10/20/80	1495	<u>73.57</u>	<u>73.57</u>
Total				<u>\$28,465.78</u>	<u>\$27,386.58</u>

* Check 5972 written on SM A/C 542; all others written on Riggs A/C 9113.



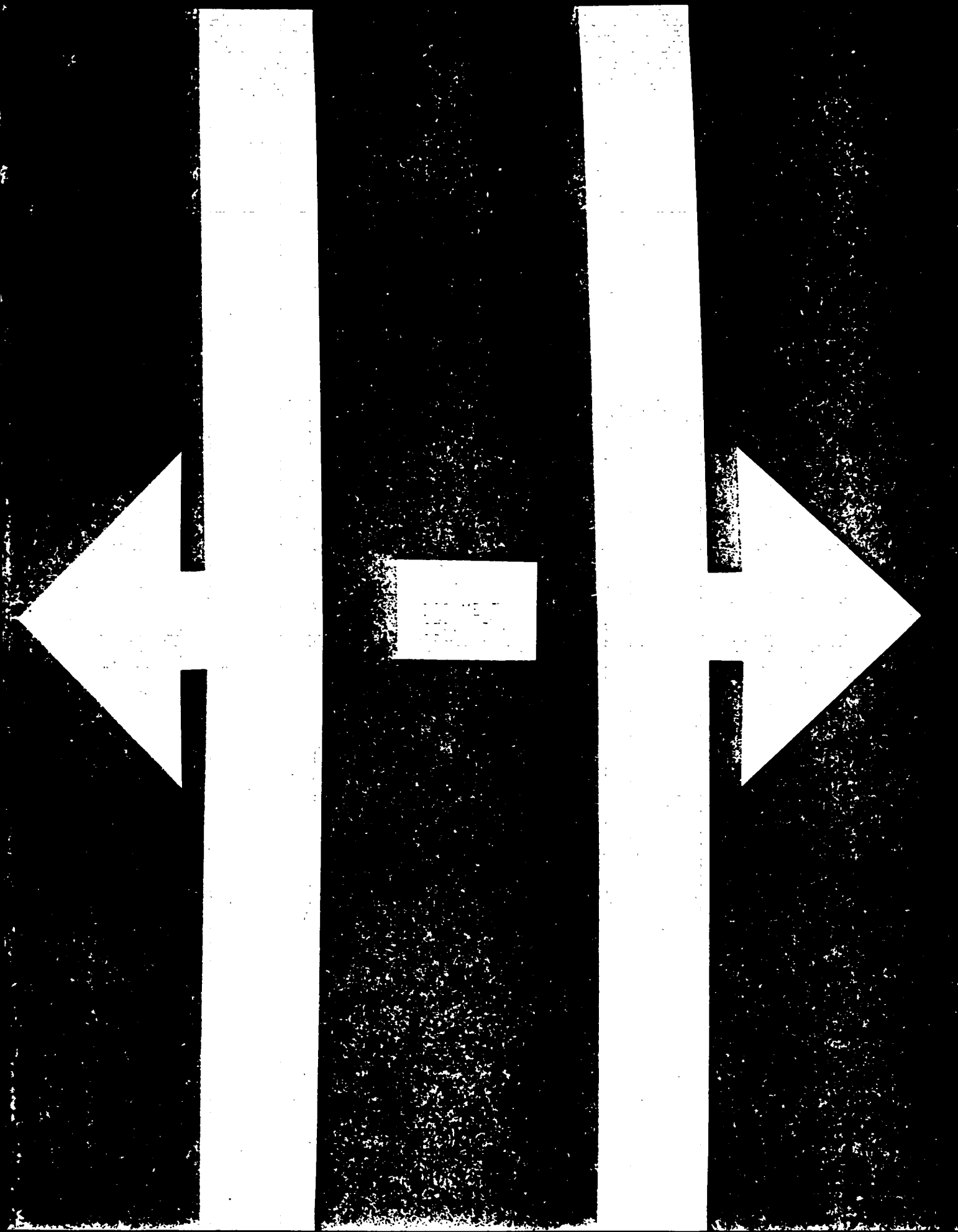
FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

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 # 1360. #1142 #1349
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF #1255
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.

8407016217







FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 3, 1983

Ronald E. Robertson, Esquire
Reagan for President Committee
Musick, Peeler and Garrett
Suite 1175, Ring Building
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Robertson:

Pursuant to 26 U.S.C. § 9038(b), on May 26, 1983, the Federal Election Commission made a final determination that President Ronald Reagan and the Reagan for President Committee should repay an additional \$87,707.90 in primary matching funds plus interest earned on public funds to the United States Treasury.

Enclosed is a Statement of Reasons in support of the Commission's final repayment determination.

Please note that, under 11 C.F.R. § 9038.2(e), the \$87,707.90 should be repaid within twenty (20) days from the date of receipt of this notice. The payment should be sent to the Commission, but made payable to the U.S. Treasury.

If you have any questions concerning this matter, please call Daniel Blessington or Anne Weissenborn of the Commission's Office of General Counsel at (202) 523-4060 or 523-4175, respectively.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

cc: Curtis Mack

FEDERAL ELECTION COMMISSION

STATEMENT OF REASONS
REAGAN FOR PRESIDENT

On May 26, 1983, the Federal Election Commission ("the Commission") made a final determination that the Reagan for President Committee ("the Committee") should repay \$87,707.90 in primary matching funds plus interest earned on public funds to the Secretary of the United States Treasury. See 26 U.S.C. § 9038(b). Pursuant to 11 C.F.R. § 9038.2(d), the Commission submits to the Committee the following statement of reasons in support of the Commission's final repayment determination.

A. Procedural Matter

In a letter dated December 30, 1982 addressed to the Office of General Counsel, counsel for the Committee raised for the first time a legal challenge to the Commission's initial repayment determination over and above the challenges raised earlier regarding particular allocation issues included in that determination. This challenge, involving the percentage of unqualified campaign expenditures required to be repaid pursuant to 26 U.S.C. § 9038(b)(2), was presented to the Commission more than one year after the deadline for receipt of the Committee's response to the initial repayment determination pursuant to 11 C.F.R. § 9038.2(b). No reason has been given by the Committee for the submission of this new issue more than one year out of the time set forth at 11 C.F.R. § 9038.2(b). Accordingly, the Commission has determined that there is no basis for any waiver of its procedural requirements and that this untimely asserted

issue need not be addressed in making its final repayment determination. But see n. 7, infra.

B. Expenditures in Excess of Overall Limitation.

The overall expenditure limitation for presidential candidates receiving public funds during the 1980 primary period, pursuant to 2 U.S.C. § 441a(b)(1)(A), was \$14,720,000. 1/ The Final Post-Primary Audit Report contained the determination that the Committee had exceeded this limitation by \$77,387.82, and the initial determination was made by the Commission that this same amount was repayable to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2). These determinations were based upon Committee reports filed through November 24, 1980. Since the Final Post-Primary Audit Report was issued, the Audit Division has updated the Committee's expenditures subject to the limitation through March, 1983, and has prepared the following analysis:

Audit Analysis - Overall Limit (2 U.S.C. § 441a(b)(1)(A))

Expenditures subject to the limitation (2/26/79-7/31/80) as noted on page 9 of Final Post-Primary Audit Report.	\$ 14,599,258.59
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Adjustments:

Add: Expenditures subject to the limitation as reported for the period 8/1/80-6/30/82.	88,257.39
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Add: Expenditures on 8/11/80 for Convention travel not included in the \$88,257.39.	29,859.58
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1/ Not included in this figure is a 20% fundraising exemption which in 1980 totaled \$2,944,000.

Add: Maximum net income realizable for tours #4 through #26 (\$142,990.78-\$25,988.10 associated with ground costs).	117,002.68
Add: Disbursements reported as exempt legal and accounting (line 25) in error (8/1/80-12/31/80).	6,748.11
Add: Voided checks for operating expenditures not reissued or resolved.	4,044.25
Add: Expenditures subject to limitation not included above.	1,782.90
Less: Disbursements erroneously disclosed as operating (subject to the limit) but chargeable to exempt legal and accounting.	(10,674.01)
Less: Disbursements erroneously disclosed as exempt fundraising but chargeable to exempt legal and accounting.	(136,691.14)
Less: Estimated Federal Income Tax payments made 3/14/80 and 6/14/80 (\$1,445.00 + \$1,163.66) reported as expenditures subject to limit (included in \$14,599,258.59 above).	(2,608.66)
Total Expenditures Subject to the Limitation 2/26/79-6/30/82.	<u>\$ 14,696,979.69</u>

Based upon the Committee's reports and audit work conducted on the Committee's expenditures as of March, 1983, the Commission finds that the Committee is now within the overall expenditure limitation.

C. Expenditures In Excess of State-By-State Limitations

2 U.S.C. § 441a(b) (1) (A) also places limitations upon the amounts which a presidential candidate receiving public funds may spend in each state during the primary campaign period. During

1980, this limitation for the state of New Hampshire totaled \$294,400. The Final Post-Primary Audit Report contained the determination that the Committee had exceeded its limitation in New Hampshire by \$137,737.71. An initial determination was made by the Commission that this same amount was repayable to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2).

Since the issuance of the above audit report, the Committee has adjusted its own internal allocation records to reflect \$293,562.34 as the amount which it agrees is allocable to New Hampshire. Committee counsel has indicated the Committee's willingness to allocate an additional amount related to one particular set of expenditures. The Commission has made the final determination that the Committee made \$349,030.84 in expenditures allocable to New Hampshire. The following is an analysis of the matters still at issue regarding the New Hampshire expenditure limitation.

(1) Media-Related Consulting Fee

The Final Post-Primary Audit Report contained the determination that the Committee should allocate to New Hampshire \$2,880.97 which represents the portion of the fee paid a media consultant/time buyer related to that consultant's media time purchases for New Hampshire. 2/

2/ This figure does not appear as such in the Final Post-Primary Audit Report but is a portion of the finding in Section B-1 that an additional \$15,317.49 in fees and replacement costs was allocable to New Hampshire.

On October 5, 1979, the Committee signed a contract with Ruth Jones, Ltd., which contained the following language:

This committee agrees to engage your firm effective October 1, 1979, to assist in the planning of all media advertising for the Reagan 1980 campaign, and to order the schedules for media advertising.

...

For these services, the Committee will pay Ruth Jones, Ltd. a fee of \$3,500 per week...

...

Media advertising will be billed to the Committee at net (gross less 15% agency commission).

The contract therefore stipulated that the contractor was being engaged to conduct overall planning of media advertising and to make actual purchases of media time. In lieu of the commission earned by media buyers on each radio or TV spot placed, Ruth Jones, Ltd. was to receive a set fee of \$3,500 a week for both placement and planning services.

In allocating to specific states expenditures made to or through this vendor, the Committee allocated net payments for media time purchases (see subsection 2 below) but did not allocate the consultant fees paid to Ruth Jones, Ltd. The Committee has argued that Mrs. Jones worked as a member of the national staff and that part of her duties involved the purchase of broadcast time. "Her fee was not related in any way to the amount or value of the broadcast or other media time she

purchased or that was purchased at her direction or under her supervision...." (Letter from Committee Counsel of December 30, 1982).

11 C.F.R. § 106.2(b) requires that "(e)xpenditures for media . . . used in a campaign in a specific state shall be attributed to that state." The activities undertaken by Ruth Jones, Ltd., for the Committee included the placement of media advertising on stations whose broadcasts are received in New Hampshire. Committees must allocate fees paid to a media consultant which serve as substitutes for the usual and allocable commissions earned by media time buyers. Otherwise a sizeable proportion of expenditures involved with "media...used" in a particular state campaign would be exempt from allocation.

In the absence of time sheets or other documentation showing actual time spent related to media expenditures in New Hampshire, the following formula was applied by the Commission in determining the portion of the fees paid Ruth Jones, Ltd., which should be allocated to New Hampshire:

<u>Total Fees Paid R.J.</u>	=	Derived Commission
Total Media Expenditures		Percentage

<u>\$91,433.50</u>	=	5.87%
\$1,588,952		

5.87% X \$49,079.52	=	\$2,880.97
(total media placed in New Hampshire per Audit staff)		

The Commission reaffirms its determination that the Committee must allocate \$2,880.97 to New Hampshire with regard to the consulting fees paid Ruth Jones, Ltd.

(2) Television Placement Costs

The Final Post-Primary Audit Report also contained the determination that an additional \$12,436.52 ^{3/} involving media placement costs should be allocated to New Hampshire, and the initial determination that this same amount was repayable. These determinations involved the application of 11 C.F.R.

§ 106.2(c)(1) which requires that expenditures made for media advertisements "distributed in more than one state" be allocated "in proportion to the viewing audience or readership of voting age which can reasonably be expected to be influenced by such expenditures."

When allocating the costs of television broadcasts emanating from stations in Massachusetts (excluding Boston), Maine and Vermont, and received in New Hampshire, the Committee used an Area of Dominant Influence method ("ADI") to determine the percentage of these television costs allocable to New Hampshire. They used a different method, Grade B Contour, for allocating the costs of television advertising placed on Boston stations. The result of the Committee's use of these two different methods, rather than one consistent approach, was a lower figure for

^{3/} Again, this figure does not appear as such in the Final Audit Report. It represents the remaining portion of the finding in Section B-1.

allocation to New Hampshire of expenditures made to Boston stations than would have been the outcome of an ADI approach, and no allocations or lower allocations to New Hampshire of payments to other New England stations than would have been the case if a Grade B Contour approach had been used. ^{4/}

11 C.F.R. § 9033.1(a)(1) requires that candidates seeking to become eligible to receive presidential primary matching funds agree to assume the burden of proving that expenditures are qualified campaign expenditures. With regard to 11 C.F.R. § 106.2(c)(1), this means the candidate has the burden of demonstrating that his allocation of media costs accurately reflects the portions of the viewing audience related to each receiving state, particularly when allocation to a state will cause that candidate to exceed that state's expenditure limitation.

The Final Post-Primary Audit Report contained the determination that the Committee had not demonstrated that its use of two inconsistent methods was reasonable. In the absence of data permitting use of a Grade B contour for all of the stations involved, the Commission applied an ADI approach to all

^{4/} Relying upon the ADI Book, 1979-80, published by the Arbitron Co., and upon Grade B Contour maps furnished by Public Records, Federal Communications Commission, the Audit Division has determined that even though broadcasts from Springfield, Massachusetts and Burlington, Vermont were received in New Hampshire, none of the costs associated with these broadcasts were allocated to that state, and that broadcasts from Portland and Poland Spring, Maine, were allocated in an apparently lower amount via an ADI approach than a Grade B contour would have required.

expenditures involving media broadcasts received in New Hampshire and initially determined that an additional \$12,436.52 should be allocated to that state.

In its responses to the Final Audit Report, the Committee has relied upon the arguments that it was reasonable for it to have interpreted the Commission's regulations as permitting media expenditure allocations on a market by market basis, and that because the Committee allocated all expenditures to Boston television stations via one method and those to non-Boston by means of another, the Commission's requirements have been met. The Commission concludes that the Committee's proposed construction of the regulation is erroneous, including the Committee's implicit argument that the Commission must defer to the Committee's interpretation of the Commission's regulations if they are "reasonable". In order to assure a fair application of the regulations to all committees, it is the Commission's obligation to interpret its rules in a uniform manner, and not merely to defer to any "reasonable" approach adopted by each committee. 5/ Regarding Section 106.2(b)(2), the Commission adheres to the view taken in the Final Post-Primary Audit, and construes this regulation to require consistent allocation

5/ Moreover, counsel's basis for his claim of reasonableness of regulatory interpretation is erroneous. Counsel bases this claim upon his interpretation of the history of Section 106.2(b)(2)(i)(B) of the Commission's revised regulations which were first published for comment on August 17, 1982, and later prescribed on April 4, 1983. This provision, which is not applicable to 1980 campaign activities and expenditures, reads in
(footnote continued)

methods with regard to media expenditures involving a particular state. Any other interpretation would permit committees to manipulate their selection of method with regard to allocations to the same state in order to arrive at the most advantageous allocation figure.

The Committee has not met its burden of proof as to the reasonableness of its use of inconsistent allocation methods. Therefore, in the absence of cost allocation figures based on the respective Grade B contours for the stations other than those in

5/ (footnote continued)

relevant part, in both its proposed and its final forms, "(e)xpenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience." (Emphasis added). Counsel argues that the underlined language is "market by market" language, and alleges that its presence in the proposed regulation indicated the Commission's willingness to consider as reasonable a market by market allocation of media expenditures, thus legitimizing the Committee's allocation methods in 1980. It should be noted, however, that this same language remained in the final language of Section 106.2(b)(2)(1)(B) prescribed by the Commission and must be read in conjunction with Section 106.2(b)(2) which states that "(e)xpenditures that fall within the categories listed below [including media advertising] shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made." (Emphasis added). Section 106.2(b)(2) was added following receipt of reactions to the proposed regulations, precisely to prevent a "market by market" interpretation of Section 106.2(b)(2)(i)(B). Contrary to counsel's assertion, such an interpretation was not intended in the proposed regulations, and when the possibility for such interpretation was drawn to the attention of the Commission appropriate clarifying language was added at Section 106.2(b)(2). Thus, the Committee cannot rely upon its own mistaken interpretation of the Commission's proposed regulations to support a claim of reasonableness for its "market by market" allocation approach to media expenditures.

Boston which are involved in this issue, the Commission has determined that the Boston television costs involved here must be allocated in accordance with the Boston market figures presented in the ADI Book and that, based on these figures, \$12,405.16 be allocated to New Hampshire. 6/

(3) Salary of Regional Director

The Committee allocated the costs of salaries and overhead related to its New England Regional Office by dividing them equally among Maine, New Hampshire and Vermont. The Final Post-Primary Audit Report contained the finding that the Committee should have allocated these costs based upon the relative activity of the New England Regional Office with regard to each of these states (i.e., a funds-expended approach) and that an additional \$7,509.19 should be allocated to New Hampshire. The Committee also did not allocate the fee paid the director of the New England Regional Office, arguing instead that he was a member of the Committee's national staff. On the basis again of a funds-expended method, the Final Post-Primary Audit Report contained the determination that \$16,233.50 of the Regional Director's fee should be allocated to New Hampshire.

6/ Other problems identified by the Commission in the Final Post-Primary Audit Report regarding the use of a Grade B Contour were (1) the Committee's employment of 1970 census figures, rather than the 1977 figures then available; and (2) the inclusion of Rhode Island's population in the Grade B contour used for the broadcasts from Boston stations when the Rhode Island primary took place on June 3, 1980 or three months after these broadcasts occurred. The requirement that the ADI allocation method be consistently used renders moot the issue of the use of 1970 census figures and the inclusion of Rhode Island's population in the Committee's Grade B allocation approach.

As noted above, on July 2, 1981, the Audit Division notified all presidential candidate committees, including the Reagan for President Committee, of the Commission's determination that it would not require allocation of expenditures for salaries paid to certain national campaign staff members while temporarily in a given state for a limited purpose not constituting advance or field work, but, rather, associated with the national campaign effort. The Committee has interpreted this language to mean that only the salaries and other expenses of field and advance personnel and of the candidate and his or her family are to be allocated to individual states, and that expenditures with regard to other categories of Committee personnel are not allocable no matter what their involvement in a particular state campaign. This interpretation, however, ignores the second element of the exemption language which specifies that allocation will not be required of those whose purpose for being in a state is association "with the national campaign effort," i.e., the planning or execution of national campaign strategy.. (Emphasis added).

After further analysis, the Commission has determined that the Committee should be permitted to allocate the costs of the Regional Office on an equal basis among the three states involved rather than on a funds-expended basis. The Commission also requires application of the same approach to the Regional Director's salary. By definition, his role as director of an office covering activities in three specific states involved the

campaigns in those states. No evidence has been provided by the Committee showing that his work while at the New England Regional headquarters involved only, or even in part, the planning or execution of national campaign strategy. As a result of these determinations, the additional amount required to be allocated to New Hampshire with regard to the New England Regional Office is \$10,200 (1/3 of the Regional Director's salary).

(4) Consultant's Fee

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The Committee allocated to New Hampshire a portion of the travel and related expenses of a consultant who worked for at least twenty days in that state prior to the February primary. Not allocated, however, was a like proportion of his consultant fee, such proportion having been deemed by the Commission in the Final Post-Primary Audit Report to equal \$1,059.60. Again, counsel has argued that this consultant was part of the national staff. Given this individual's direct involvement in the New Hampshire campaign, as confirmed by the length of his stay in New Hampshire and by the Committee's allocation of his travel and other expenses, and absent evidence that his work while in New Hampshire actually involved the national campaign and not New Hampshire, the Commission has determined that \$1,059.60 of his total fee must be allocated to New Hampshire.

(5) Tour Related Disbursements

The Final Post-Primary Audit Report also contained the finding that \$71,169.63 in salaries, hotel costs and transportation costs involved in two series of campaign tours

into New Hampshire was to be allocated to that state, and the initial determination that repayment of a like amount was required. In its first response to the Final Post-Primary Audit Report, the Committee acknowledged allocation to New Hampshire of \$681.82 in bus and gasoline expenses. The Committee more recently has agreed that hotel and other expenses associated with certain individuals are also allocable to New Hampshire.

a) The first tour covered 16 New Hampshire cities on February 5 and 6, 1980, and originated from Danvers, Massachusetts. Twenty-eight persons associated with the Committee stayed at the hotel in Danvers during the period of this tour; the expenses of eleven are now deemed allocable by the Commission. The Committee agrees with regard to all of these individuals.

Therefore, the Commission has determined that the Committee is required to allocate an additional \$5,245.56 to New Hampshire with regard to the costs associated with the Danvers-based tour.

b) The second series of tours in New Hampshire originated from a hotel in Andover, Massachusetts, and took place during the period of February 10-28, 1980. Fifty-one persons associated with the Reagan campaign stayed at this hotel during the period of the tours; the expenses of thirty-two are deemed allocable by the Commission. The Committee now agrees to allocate the expenses associated with all of these individuals.

Therefore, the Commission has determined that the Committee must allocate an additional \$20,177.21 to New Hampshire with regard to expenditures associated with the Andover-based tour.

(6) Nashua Debate

In the Final Post-Primary Audit Report, the Commission determined that additional sums involving outstanding debts, other vendor payments and miscellaneous expenses totaling \$40,482.83 were allocable to New Hampshire. Since the issuance of this report, the Committee has allocated an additional \$12,516.04 (net) to New Hampshire, and the Audit Division has calculated that \$24,467.78 in other expenditures does not require allocation based upon documentation reviewed in March, 1981. Therefore, only \$3,500 remains at issue, this figure representing the costs incurred by the Committee as a result of the candidate debate held in Nashua, New Hampshire, on February 23, 1980.

Counsel for the Committee initially argued that this \$3,500 expenditure represented a cost of complying with the Federal Election Campaign Act and thus was not allocable. More recently, without withdrawing this contention, counsel has argued that the \$3,500 cost "should be allocated among all of the candidates who appeared on the platform with Mr. Reagan, and that no more than \$600 of the cost should be a New Hampshire expense, as far as the Committee is concerned." (Letter from Committee counsel of December 30, 1982).

No evidence has been presented that the Committee ever received reimbursements from the other five candidates for their

alleged shares of the \$3,500 in expenditures. It is unclear why five other candidates are cited as beneficiaries since only one, George Bush, actually participated. The other four candidates present, John Anderson, Philip Crane, Robert Dole and Howard Baker were not permitted to join the debate. Even if the Committee were deemed to have made contributions-in-kind to these other committees, such contributions would still be reportable as expenditures by the Committee pursuant to 11 C.F.R.

§ 104.13(a) (2). Therefore, the Commission has found no basis for determining that only \$600, rather than the full \$3,500, should be deemed an expenditure by the Committee allocable to New Hampshire, and has determined that the \$3,500 expended by the Committee with regard to the Nashua debate must be allocated to New Hampshire.

Final Repayment Determination re: Non-Qualified Campaign Expenditures and State-by-State Limitations

A summary of the Committee's expenditures which the Commission has determined are allocable to New Hampshire is as follows:

Amount Allocated Per Committee	
Records	\$ 293,562.34
Media-Related Consulting Fee	2,880.97
Television Placement Costs	12,405.16
Salary of Regional Director	10,200.00
Consultant's Fee	1,059.60
Tour Related Disbursements (Danvers and Andover)	25,422.77
Nashua Debate	3,500.00
Total Amount Allocable to New Hampshire	\$ 349,030.84
Less: New Hampshire Limit	(\$ 294,400.00)
AMOUNT IN EXCESS OF LIMIT	\$ 54,630.84

Therefore, the Commission has determined that the Committee must repay to the U.S. Treasury \$54,630.84 pursuant to 26 U.S.C. § 9038(b)(2) 7/.

7/ Section 9038(b)(2) of the Presidential Primary Matching Payment Account Act requires the Commission to seek repayment from publicly funded candidates of any amounts used for any purpose other than to defray qualified campaign expenses. Section 9038.2(a)(3) specifies that the amount repaid shall be equal to the amount improperly expended. See also 11 C.F.R. § 9038.2(a)(2) (requiring full repayment of the amount of funds used to defray expenses other than qualified campaign expenses). On December 30, 1982, the Committee asserted for the first time that a repayment in the full amount of committee expenditures which exceed state limitations and therefore are not qualified campaign expenses, is inappropriate. As noted on page 1, supra, this issue was not raised in a timely manner, and thus need not be addressed by the Commission. The Commission notes, however, the Committee's assertion that candidates in a surplus position should be required to repay a lower percentage of their unqualified campaign expenditures than candidates in a deficit position. In support of this position, counsel cites the Commission's explanation and justification for 11 C.F.R. § 9038.2(a)(2) and (3) that the effect of expenditures of private funds on non-qualified campaign expenses is to increase the amount of public funds needed for qualified campaign expenses because of the necessity of restoring misused private monies. See Explanation and Justification, 44 Fed. Reg. 20336 (April 4, 1979). Counsel argues that this so-called "restoration" theory is not applicable to a committee which ends a campaign with a surplus.

The Commission finds the Committee's claim for more favorable treatment of surplus candidates to be contrary to the Act and the regulations. Neither the statute nor the regulations distinguishes between surplus and deficit candidates as to the repayment formula to be applied by the Commission. 11 C.F.R. § 9038.2(b)(3) requires repayment of the full amount of non-qualified campaign expenses by all committees. Therefore, the distinction drawn by the Committee is not supportable. In addition, Section 9038.2(b)(3) apparently implements the intent of Congress as to the effect of 26 U.S.C. § 9038(b)(2), as Congress did not exercise its veto power over that regulation. See FEC v. Dem. Senatorial Campaign Committee, 451 U.S. 27, 34 (1981).

C. Determination of Net Outstanding Campaign Obligations - Surplus Repayment

26 U.S.C. § 9038(b)(3) provides that a candidate with surplus funds be required to make a repayment to the United States Treasury of "that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts ..." Commission regulations at 11 C.F.R. § 9038.3(c)(1) provide that "[i]f on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 C.F.R. § 9034.5, reflect a surplus, the candidate shall within 30 days of the ineligibility date repay to the Secretary of the Treasury an amount which represents the amount of matching funds contained in the candidate's surplus ..."

Ronald Reagan's date of ineligibility was July 16, 1980, the date of Mr. Reagan's nomination as the candidate of the Republican Party for President of the United States. See 11 C.F.R. §§ 9033.5(c) and 9032.6. On December 22, 1980, the Committee made a surplus repayment to the United States Treasury of \$754,044.67. In the Final Post-Primary Audit Report, the Commission made an initial repayment determination under 11 C.F.R. § 9038.2 that the Committee repay \$198,835.25 in additional surplus funds. The Committee disputed the Commission's determination and has made no further surplus repayment.

Since the Commission's initial determination, the Committee's continuing financial activity has had the effect of reducing the amount of the Committee's surplus. In addition, the Commission decided on May 19, 1983, to exclude from the surplus calculation certain contributions received by the Committee after the candidate's ineligibility date, thereby further reducing the surplus amount upon which repayment is based. At this point, the Commission and Committee are in agreement on all but one item affecting the surplus repayment issue. This item is included in the analysis of the Committee's financial position as of the candidate's date of ineligibility, Net Outstanding Campaign Obligations ("NOCO"), as updated since the initial determination. The Committee's NOCO, as determined by the Commission on May 26, 1983, is presented below.

Analysis of Net Outstanding Campaign Obligations
as of July 16, 1980-Reagan For President

Assets

Cash on Hand 7/16/80	\$3,629,268.03
Loans Receivable	170,000.00
Accounts Receivable	386,518.97
Accrued Interest	21,344.94
Receivable as of 7/16/80	
Capital Assets	<u>10,000.00</u>
Total Assets	\$4,217,131.94

Liabilities

Accounts Payable for Qualified Campaign Expenses (Excluding post-ineligibility Legal Fees)	\$1,705,723.87	
Actual Legal Fees 7/17/80-3/31/83	228,784.53	
Estimated Winding Down Expenses (Legal fees) from 4/1/83 to Termination	30,000.00*	
Federal tax liability on interest earned through 7/16/80	<u>13,001.12</u>	
Total Liabilities	1,977,509.52	
Net Outstanding Campaign Obligations-Surplus	2,239,622.42	
Payback Percentage		<u>.340963</u>
26 U.S.C. 9038 (b) (3) repayment amount		763,628.38
Less repayment received 12/22/80		<u>754,044.67</u>
Additional Repayment - Surplus (not including interest)		\$ 9,583.71

On the basis of this NOCO analysis, the Commission has determined that the Reagan For President Committee must make an additional repayment of surplus funds to the United States Treasury of \$9,583.71 plus additional net interest earned on the Federal portion of surplus funds from July 16, 1980 through the date that the Committee makes full repayment in accordance with this final repayment determination. Two items are discussed below. One is the Commission's reconsideration of the position it took in the initial repayment determination involving the

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treatment of contributions received after the candidate's date of ineligibility; this item is no longer in dispute. The other item is of more recent origin, and deals with the Committee's estimated winding down costs for legal fees from April 1, 1983 until the Committee's termination. 8/

Contributions Received After the Candidate's Date of Ineligibility

As discussed previously, Ronald Reagan received the Republican Party's Presidential nomination on July 16, 1980. Pursuant to Commission regulations, this date was also his date of ineligibility and the end of his matching payment period marking the end of his primary campaign. See 11 C.F.R. §§ 9033.5 and 9032.6.

In the Final Post-Primary Audit Report, the Commission notified the Committee of its initial repayment determination regarding surplus and set forth the legal and factual reasons for the determination. One of the factors upon which the Commission made its initial determination involved the treatment of contributions received by the Committee subsequent to the date of

8/ Winding down costs are considered qualified campaign expenses if they are incurred before the date of ineligibility or are associated with the termination of political activity, such as the costs of complying with the Act's post-election requirements. See 11 C.F.R. § 9034.4(c). After a candidate's date of ineligibility, a publicly-funded committee and Commission staff will attempt to agree on estimates of winding down costs for inclusion in the candidate's NOCO. As time passes, the estimates may be revised to reflect actual costs incurred. Assuming that these actual costs are qualified campaign expenses, any disputes involving the estimates themselves tend to become more sharply defined as the wind-down period comes to an end.

ineligibility. The audit report noted that the Committee had received \$156,882.75 in contributions that were received by the Committee after July 16, 1980 but which were dated July 16, 1980 or before. The Commission's position was that the amount of these contributions should be included in the candidate's NOCO for the purposes of calculating the surplus repayment to the United States Treasury. In disputing the Commission's initial repayment determination, the Committee argued that the Commission should not have included this amount in its calculation of surplus repayment.

The Commission has reconsidered this issue, and has not included these amounts as Committee assets in calculating the Committee's surplus and in making its final repayment determination.

Estimated Winding Down Expenses (Legal Fees)
from 4/1/83 to Termination

Commission regulations 11 C.F.R. § 9034.4(a) and (b) provide that all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses, and that any expenses incurred after a candidate reaches the date of ineligibility are not qualified campaign expenses. 11 C.F.R. § 9034.4(c), however, carves out an exception to this general rule and provides, in part:

(c) Winding down costs shall be considered a qualified campaign expense if such costs are:

(1) Incurred before the date of ineligibility; or

(2) Associated with the termination of political activity, such as the cost of complying with post election requirements of the Act and other necessary administrative costs, including office space rental, staff salaries, etc.

Typically, estimates of winding down costs are included in the analysis of a committee's NOCO included in the publicly-released audit report, and will have an effect on the amount of matching fund payments a candidate may receive subsequent to his or her date of eligibility (deficit candidate) or the amount of repayment which must be made to the United States Treasury (surplus candidate). Since the audit process can be lengthy, the analysis of a candidate's NOCO must be adjusted from time to time to reflect actual costs for expenses which were once estimated. For instance, a NOCO analysis containing an accounts payable of \$10,000 and estimated winding down costs of \$10,000 may, several months later, contain an accounts payable of \$20,000 with no further estimates. (This of course assumes that the estimate turned out to be precise, which is rarely, if ever, the case.)

In the present situation, the publicly-released audit report contained an estimated winding down figure of \$82,652.18. 9/

9/ Since that time, the Committee incurred actual expenses far in excess of this early estimate. Having reviewed the payments actually made since the First Post-Primary Audit Report, the Audit Division concluded that they were qualified campaign expenses, and adjusted the "Accounts Payable" figures to reflect the additional activity. Consequently, the NOCO analysis included in this Statement of Reasons differs substantially from the NOCO analysis contained in the Final Post-Primary Audit Report.

While this figure was not challenged by the Committee, the Committee has submitted three revised estimates to Commission staff since January of this year, the most recent having been received on April 8, 1983. The first of these submissions estimated that \$410,000 in legal fees might be required before the Committee terminated its activities. The second estimate reduced that amount to \$285,000 and the most recent estimate reduced the amount to \$270,250. The basis for these reductions in the Committee's estimates involved the resolution of certain proceedings before the Commission. The Commission hereby rejects the Committee's most recent estimate of \$270,250. At this time, the Commission instead approves an estimate for future legal fees of \$30,000.

The difference between the Committee's estimate and the Commission's is attributable to the Committee's inclusion of approximately \$240,000 in its estimate which represents the amount the Committee may expend: if the Committee is unsatisfied with the result in this and other Commission proceedings; if it chooses not to settle any outstanding issues which remain after the proceedings are concluded; and instead contests those issues in the courts in litigation against the Commission. 10/ At this

10/ Confidentiality provisions preclude a specific discussion of the Committee's estimates at this time. See 2 U.S.c. § 437g(a)(4)(B)(i) and (12). However, the Commission has decided that any final decision on the legal fees question should be deferred until such time as the costs have actually been incurred. Accordingly, a full review of this issue is premature at this time.

point, the Commission believes that these estimates are too speculative and uncertain to be accepted and used in arriving at a final surplus repayment determination. The inclusion of the litigation fees in the Committee's estimated winding down costs also raises questions as to whether or not these fees, if ultimately incurred by the Committee, would be qualified campaign expenses, and thus payable with federal matching funds.

Commission regulations provide the general rule that expenses incurred after a candidate reaches his or her date of ineligibility are not qualified campaign expenses. 11 C.F.R. § 9034.4(b). The one exception to this rule is that winding down costs shall be considered a qualified campaign expense if they are "[a]ssociated with the termination of political activity, such as the cost of complying with post election requirements of the Act and other necessary administrative costs, including office space rental, staff salaries, etc." 11 C.F.R. § 9034.4(c)(2). While most legal fees incurred with respect to the Commission's internal proceedings appear to fall within this definition, it is less clear that all legal fees for challenging Commission actions in the courts are within it.

Accordingly, the Commission will defer consideration of the Committee's litigation costs until such time as the Committee actually incurs such costs. As stated previously, the Commission has included a figure of \$30,000, representing estimated legal costs for responding to ongoing proceedings before the

Commission, in calculating the Committee's surplus amount and in making its final repayment determination. If, subsequent to the final repayment determination, actual events demonstrate that the Committee incurred in excess of \$30,000 in qualified campaign expenses, the Commission may certify to the United States Treasury for payment to the Committee such additional matching fund payments to which the candidate is entitled. If, on the other hand, the Committee does not incur qualified campaign expenses of at least \$30,000, the Commission may seek an additional surplus repayment of that portion of the estimate which was not incurred for qualified campaign expenses. In making this final repayment determination, the Commission expressly allows for possible adjustments to be made at a later date based on events which may or may not occur.

Final Surplus Repayment Determination

The Commission has determined that the Reagan for President Committee and President Ronald W. Reagan must repay to the U.S. Treasury, pursuant to 26 U.S.C. § 9038(b)(3) and 11 C.F.R. §§ 9038.2 and 9038.3, \$9,583.71 plus net interest earned on the federal portion of surplus funds from July 16, 1980 through the date that the Committee makes full repayment in accordance with this final repayment determination of the Commission. 11/

11/ The precise amount of interest repayable to the United States Treasury is dependent, in part, on when the Committee makes its repayment in accordance with the Commission's final determination. On May 26, 1983, the Commission determined that the Committee must repay \$23,493.35 in net interest earned on the federal portion of surplus funds through March 31, 1983.

Summary of Final Repayment Determinations

<u>Repayment Basis</u>	<u>Amount Repayable</u>
Non-Qualified Campaign Expenditures and State-by-State Limitations (26 U.S.C. § 9038 (b) (2))	\$54,630.84
Repayable Portion of Surplus Funds (26 U.S.C. § 9038 (b) (3))	9,583.71
Net Interest Earned on Federal Portion of Surplus Funds through March 31, 1983 (26 U.S.C. § 9038 (b) (3))	23,493.35
Additional Net Interest Earned on Federal Portion of Surplus Funds through Date of Repayment (26 U.S.C. § 9038 (b) (3))	To be calculated
TOTAL REPAYMENT	\$87,707.90 (plus additional interest)

OVERALL FINAL REPAYMENT DETERMINATION -
SURPLUS AND NON-QUALIFIED

Pursuant to 26 U.S.C. § 9038 (b) (2) and (3) and 11 C.F.R. §§ 9038.2 and 9038.3, the Commission has determined that, for the foregoing reasons, the Reagan for President Committee and President Ronald W. Reagan must repay to the United States Treasury \$87,707.90 plus all net interest earned on the Federal portion of surplus funds from July 16, 1980 through the date that the Committee makes full repayment in accordance with this final repayment determination of the Commission.

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