



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

May 26, 1989

MEMORANDUM

TO: FRED EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA *Rh For RJC_5/26/89*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON THE
BABBITT FOR PRESIDENT COMMITTEE

Attached please find a copy of the Final Audit Report on the Babbitt for President Committee which was approved by the Commission on May 25, 1989.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure ✓
Reports Analysis Division
FEC Library

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FEDERAL ELECTION COMMISSION

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REPORT OF THE AUDIT DIVISION
ON THE
BABBITT FOR PRESIDENT COMMITTEE

I. BackgroundA. Overview

This report is based on an audit of the Babbitt for President Committee ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) 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, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) 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 January 7, 1987. The Committee maintains its headquarters in Phoenix, Arizona.

The audit covered the period from the Committee's inception, January 1987 through March 31, 1988. In addition, certain other financial activity relating to the Committee's Statement of Net Outstanding Campaign Obligations was reviewed through May 20, 1988.

The Committee reported an opening cash balance of \$-0-, total receipts of \$4,010,100.00; total disbursements of \$3,813,141.00; and a closing cash balance of \$180,402.00^{1/} on March 31, 1988. Under 11 C.F.R. § 9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

^{1/} Due to math errors made by the Committee, the totals do not foot.

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

B. Key Personnel

The Committee Treasurer during the period covered by the audit was Mr. Ronnie Lopez.

C. Scope

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

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

A. Itemization of Expenditures

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount and purpose of such operating expenditure.

The Committee's disbursement records were reviewed to determine if all disbursements aggregating in excess of \$200 per calendar year were itemized as required on the Committee's disclosure reports. The results of sample testing the disbursements made from the state accounts between January 1987 and March 31, 1988 and from the Committee's headquarters payroll account between 11/30/87 and 12/31/87 indicated that 16% of the itemizable disbursements were not itemized as required.

The explanation provided by Committee officials was that the Committee had had difficulty obtaining the necessary disbursement records from the state accounts timely enough to include all disbursements made from the state accounts on the disclosure reports and that the 12/7/87 payroll was inadvertently omitted from the disclosure reports.

At the exit conference held on June 13, 1988, Committee officials stated that they would file amended Schedules B-P to correct the itemization problem.

It was also noted that the expenditures from the state accounts were apparently excluded from the Committee's reported totals.

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In the interim audit report, the Audit staff recommended that the Committee file amended Schedules B-P to correct the itemization problem noted above for the period January 1987 through March 31, 1988.

On January 23, 1989, the Committee provided to the Audit staff amended Schedules B-P, which materially corrected the itemization problem discussed above.

Recommendation #1

The Audit staff recommends no further action on this matter.

B. Matters Referred to the Office of General Counsel

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

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The Regulations at 11 C.F.R. § 9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility. The formula and appropriate calculation with respect to the Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified through the Date of Ineligibility - 2/18/88}}{\text{Numerator plus Private Contributions Received through 2/18/88}} = .283298$$

$$\frac{\$870,133.58}{\$870,133.58 + \$2,201,311.86} = .283298$$

Thus, the repayment ratio for non-qualified campaign expenses is 28.3298%.

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B. Apparent Non-Qualified Campaign Expenses

Section 9038.2(b)(3) of Title 11 Code of Federal Regulations states that the Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 C.F.R. § 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 C.F.R. § 9038.2(b)(2)(iii).

Section 9033.11 of Title 11 Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) are qualified campaign expenses. For disbursements in excess of \$200 to a payee the candidate shall present one of the following: a receipted bill from the payee that states the purpose of the disbursement; a cancelled check negotiated by the payee and a bill, voucher or invoice generated by the payee stating the purpose of the disbursement, or a voucher or contemporaneous memorandum from the candidate or committee that states the purpose of the disbursement. Where neither a receipted bill nor supporting documentation as described previously is available, a cancelled check negotiated by the payee that states the purpose of the disbursement is required. Where a cancelled check stating purpose is not available the committee may present a check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented or evidence that the disbursement is covered by a preestablished written campaign committee policy.

During the review of the Committee's expenditures it was noted that 41 expenditures from their Iowa, Wyoming and Ohio bank accounts, totalling \$6,441.42, were not documented in accordance with 11 C.F.R. § 9033.11.

The Committee stated that it had not received the documentation from the state headquarters. Committee officials indicated they would attempt to provide documentation and were provided schedules of the above expenditures on July 25, 1988.

In the interim audit report the Audit staff recommended that the Committee submit documentation which demonstrated the above expenditures were qualified campaign expenditures and that absent such a demonstration, the Audit staff would recommend that the Commission make an initial determination that the Committee make a pro rata repayment of \$1,823.47 ($\$6441.42 \times .283085$) to the U.S. Treasury.

The Committee included in its January 23, 1989 response to the interim audit report documentation demonstrating that 35 of the expenditures discussed above, totalling \$2,895.43, were

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qualified campaign expenses. The remaining 6 expenditures, totalling \$3,545.99, are still not documented in accordance with 11 C.F.R. § 9033.11 (See Attachment I).

Conclusion

On May 25, 1989, the Commission made an initial determination that the Committee is required to repay \$1,004.57 (\$3,545.99 x .283298) to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

C. Determination of Net Outstanding Campaign Obligations

1. Missing Records

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations requires political committees to maintain records, including bank records, with respect to the matters required to be reported, in sufficient detail that the necessary information and data from which the filed reports and statements may be verified and checked for accuracy and completeness.

The Committee's NOCO Statement, dated May 20, 1988, detailed estimated Accounts Receivables and Accounts Payables in the amounts of \$15,000.00 and \$174,700.00, respectively. The Committee provided the Audit staff with documentation to support \$3,300.00 in Accounts Receivable, none of which was included in the estimate. The Committee provided documentation to support \$1,538.17 in Accounts Payable, leaving \$173,161.83 undocumented.

On January 23, 1989, the Committee provided documentation to support 96% of the previously undocumented Accounts Payable. No documentation was submitted in support of the Accounts Receivable, however, the review of FEC Reports Line 20 (Offsets to Expenditures) filed since the analysis of the May 20, 1988 NOCO enabled the Audit staff to estimate Accounts Receivable (See Finding III.C.2.).

Recommendation #2

The Audit staff recommends no further action on this matter.

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2. NOCO Analysis

Section 9034.5(a) of Title 11 Code of Federal Regulations requires that within 15 days of the candidate's date of ineligibility, the candidate submit a Statement of Net Outstanding Campaign Obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs.

In addition, 11 C.F.R. § 9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 C.F.R. § 9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Governor Babbitt's date of ineligibility was February 18, 1988. The Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) which reflected the Committee's estimated NOCO as of February 18, 1988. The Audit staff analyzed the amounts listed and made adjustments to the NOCO. The Committee's NOCO as adjusted by the Audit staff appears below:

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Babbitt for President
 Audit Analysis of February 18, 1988a/ NOCO Statement
 Determined as of May 20, 1988

Assets

Cash on Hand	\$	100.00	
Cash in Bank		79,472.70	
Est. <u>b</u> / Accounts Rec.		20,517.68	
Capital Assets <u>c</u> /		<u>17,423.00</u>	
TOTAL ASSETS			<u>\$117,513.38</u>

Obligations

Disbursements for Qualified Campaign Expenses (5/20/88-12/31/88) <u>b</u> / <u>d</u> /		99,056.47	
Accounts Payable for Qualified Campaign Expenses as of 5/20/88 <u>e</u> /		96,481.14	
Accounts Payable for Contribution Refunds		8,591.00	
Loans		58,665.69	
Estimated <u>b</u> / Winding Down Costs (5/20/88 - 12/31/88)			
Salaries/Consulting	\$	29,651.06	
Rent		1,057.68	
Storage		343.69	
Legal Costs		3,072.93	
Operating		13,911.14	
Telephone		3,772.48	
Supplies		377.29	
Postage		<u>1,200.00</u>	
		<u>53,386.27</u>	
TOTAL OBLIGATIONS			<u>316,180.57</u>
Net Outstanding Campaign Obligations - Deficit as of 2/18/88			<u>(\$198,667.19)</u>

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Notes to May 20, 1988
Statement of Net Outstanding Campaign
Obligations as of February 18, 1988

a/ February 18, 1988 is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

b/ Estimates were determined from amounts reported by the Committee on their FEC reports subsequent to the close of fieldwork and are subject to change pending verification.

c/ Capital Assets:

Purchase Prices (total)	\$33,443
Less: 40% Depreciation	<u>(13,377)</u>
Subtotal	\$20,066
Less: Sale of Assets (Documented)	<u>(2,643)</u>
Total	<u>\$17,423</u>

d/ Five non-qualified campaign expenses from the Ohio bank account are excluded due to unavailable expense date information for these items.

e/ This total includes previously undocumented Accounts Payable for which the Committee provided documentation in their January 23, 1989 response to the interim audit report (See Finding III.C.1.).

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BABBITT FOR PRESIDENT COMMITTEE

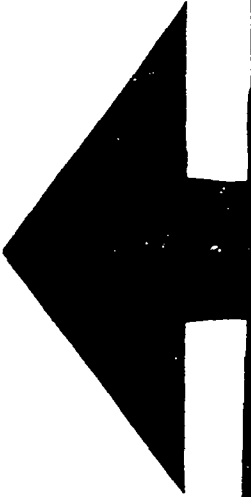
Undocumented Expenditures

Check No.	Payee	Date	Amount	Bank
1. 102	Sharon Bolinger	01/23/88	19.95	Equity State Bank (Wyoming)
2. <u>a/</u>	<u>a/</u>	<u>a/</u>	156.41	State Savings Bank (Ohio)
3. <u>a/</u>	<u>a/</u>	<u>a/</u>	1,964.20	" " " "
4. 101	<u>a/</u>	<u>a/</u>	259.30	" " " "
5. 102	<u>a/</u>	<u>a/</u>	1,000.00	" " " "
6. 103	<u>a/</u>	<u>a/</u>	<u>146.13</u>	" " " "
Total 6 Items			<u>\$3,545.99</u>	

a/ Not available

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9
0
7
0
1
6
4
4
6
5
4

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FEC
DOCUMENT
SEPARATOR

