FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 3, 1991

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT ON THE DUKAKIS/BENTSEN COMMITTEE, INC. AND DUKAKIS/BENTSEN GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

Attached please find a copy of the Final Audit Report on the Dukakis/Bentsen Committee, Inc. and Dukakis/Bentsen General Election Legal and Accounting Compliance Fund (Revised), which was approved by the Commission on November 22, 1991. This report replaces the version considered by the Commission as Agenda Document #91-114 on October 31, 1991.1/

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

1/ Please refer to Agenda Document #91-114 for a copy of the legal analysis.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MJ000177
11/20/91
(Revised)

REPORT OF THE AUDIT DIVISION ON THE DUKAKIS/BENTSEN COMMITTEE, INC. - AND DUKAKIS/BENTSEN GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

I. Background

A. Overview

This report is based on an audit of the Dukakis/Bentsen Committee, Inc. ("the GEC") and the Dukakis/Bentsen General Election Legal and Accounting Compliance Fund ("the Compliance Fund"), 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 Election Campaign Fund Act. The audit was conducted pursuant to 26 U.S.C. §9007(a), which states that after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

In addition, 26 U.S.C. §9009(b) states, in part, that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The GEC registered with the Commission on May 18, 1988, and the Compliance Fund registered with the Commission on April 23, 1990.1/ The committees maintained headquarters in Boston, Massachusetts.

The audit covered the period from the GEC and Compliance Fund's inception May 15, 1988, through June 30, 1989, the last day covered by the most recent reports filed with the Commission at the time of the audits. In addition, certain financial activity was reviewed through September 30, 1989. Finally, reported activity was reviewed for the period October 1, 1989 through June 30, 1991.

The GEC reported an opening cash balance of -0-; total receipts of $55,899,168.94; total expenditures of $55,657,003.79; and a June 30, 1989 cash balance of $242,165.15. The Compliance Fund reported an opening cash balance of -0-; total receipts of

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1/ The Compliance Fund should have registered in May/June 1988.

$3,315,029.28; total expenditures of $2,868,536.03; and a June 30, 1989 cash balance of $446,493.25. Under 11 C.F.R. §§9007.1(b)(3) and 9007.1(e)(4) additional audit work may be conducted and addenda to this report issued as necessary.

This report is based upon documents and workpapers which support each of its 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 Treasurers of the GEC and the Compliance Fund were Mr. Robert A. Farmer and Mr. Edward Pliner, respectively.

C. Scope

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

II. Findings and Recommendations Related to Title 2 of the United States Code - Dukakis/Bentsen Committee, Inc.

A. Unreported Activity

Sections 434(b)(4)(B) and (E) of Title 2 of the United States Code, in part, require that each report under this section shall disclose for the reporting period and the calendar year, the total amount of all disbursements for authorized committees, transfers to other committees authorized by the same candidate and the repayment of all loans.

Sections 434(b)(2)(E) and (H) of Title 2 of the United States Code state, in part, that each report under this section shall disclose for the reporting period and calendar year, the total amount of all receipts, and the total amount of all transfers from other authorized committees of the same candidate together with all other loans.

Section 9003.4(b)(2) of Title 11 of the Code of Federal Regulations states, in part, that a major party candidate may borrow from his or her legal and assistance compliance fund for the purpose of defraying permissible expenditures described in 11 CFR 9003.4.

1. Unreported Transfers

During the period May 16, 1988, through July 21, 1988 the Compliance Fund transferred $1,242,500 to the GEC

pursuant to 11 C.F.R. §9003.4. The GEC and Compliance Fund included only $362,500 of this amount on their disclosure reports. On July 28, 1988, the GEC transferred $1,237,500 back to the Compliance Fund however again only $362,500 was included on the GEC or Compliance Fund reports. A $5,000 transfer from the GEC to the Compliance Fund on September 21, 1988 also was not reported by the GEC and Compliance Fund.

These transactions resulted in reported receipts and disbursements of both the GEC and Compliance Fund being understated by $880,000. At the exit conference Compliance Fund officials were provided with a schedule of the unreported transactions and agreed to amend the Compliance Fund's disclosure reports to include the transfers. On November 13, 1989, the Compliance Fund filed amended reports disclosing the $880,000 in transfers.

In the interim audit report the Audit staff recommended that the Compliance Fund provide any additional comments deemed necessary regarding the unreported transfers. In response to the interim audit report the Compliance Fund provided the following explanation: "The under-reporting of the $880,000 was also an accounting error caused by changes in the personnel of the accounting office. There has been no issue raised at all of the proper expenditure of these funds, only of their accounting treatment. The error was corrected as soon as it was brought to the Committee's attention. On November 13, 1989, following the exit conference, the Committee filed amended reports."

2. Expenditures for Advance School

In August 1988, the GEC conducted a school for its advance staff at a hotel in Framingham, Massachusetts. Documents including hotel bills, check request forms, American Express receipts, and cancelled checks reviewed by the Audit staff indicate that the total costs associated with the school were $50,370.93. The GEC paid $20,000 directly to the hotel. The majority ($28,470.93) of the remaining balance was paid by an employee of the GEC coordinating the school as follows: three charges to his American Express card, dated August 26, 1988, totalling $20,000 along with a service charge of $328, and two checks drawn on the individual's personal checking account on August 26, and August 28, 1988, in the amounts of $5,000 and $3,142.93 respectively. The remaining $1,900 [$50,370.93 less ($20,000 + $20,000 + $5,000 + $3,142.93 + 328)] was paid directly to the hotel in the form of checks and currency by individuals who attended the school.

The coordinator submitted a reimbursement request totalling $14,720.93 on August 30, 1988 and the GEC issued a check in that amount on September 6, 1988. According to the GEC's check request form, the difference between the amount advanced by the coordinator ($28,470.93) and the amount paid ($14,720.93) was the result of the coordinator receiving $13,750.00 in checks made

payable to him by attendees. The only reporting of the transactions noted above by the GEC was the $20,000 paid directly to the hotel and the $14,720.93 paid to the coordinator.

When questioned about this activity, a GEC official stated that the individuals who paid their own way were covered by the Act's volunteer exemption and that the GEC had acted properly in the matter. The official did state that an attempt to obtain additional records regarding this activity would be made.

In the interim audit report the Audit staff recommended that the GEC obtain and provide the identification of the attendees who made payments directly to the individual coordinating the advance school along with the amounts paid. In addition the Audit staff recommended that the GEC provide additional information regarding the activities conducted at the advance school including the cost to each participant, the costs associated with the school, and information demonstrating that the amounts paid by the coordinator and participants were not contributions to the GEC. The Audit staff further recommended that the GEC amend its disclosure reports to include the total costs associated with the advance school including the amounts paid directly to the coordinator by attendees.

In response to the interim audit report, on November 12, 1989, the GEC provided the identification of the individuals attending the advance school. Regarding the total cost of the school, the GEC agreed with the amount ($50,370.93) identified by the Audit staff in the interim audit report. According to the GEC, records regarding the number of attendees is not available, however using 400, the highest number of attendees that could have been accommodated, (the GEC believes the number was closer to 275) the cost for each attendee would have been $124.50. The response further states "Each attendee was asked to pay what they could and most paid either $50 or $100 of his or her food and lodging costs; the rest was subsidized by the Committee. Therefore no attendee paid in excess of -- or even the equivalent of -- his or her food and lodging costs." The GEC amended its 1988 year end disclosure report to report the amounts paid by the attendees to the coordinator. According to the GEC, amounts were paid to the coordinator because the hotel refused to accept the individuals' out-of-state personal checks. The GEC's response reiterates its position that payments made by the attendees related to their personal expenses as volunteers to the GEC and that none of the payments were used to defray the costs of materials or other expenses incident to the training program itself. All such costs were paid for entirely by the GEC.

Recommendation #1

The Audit staff recommends no further action.

B. Media Records and Commissions

Section 441b(a)(2) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to any political office.

Section 9003(b)(2) of Title 26 of the United States Code states, in part, that in order to be eligible to receive any payments under section 9006, the candidate of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that no contributions to defray qualified campaign expenses have been or will be accepted by such candidate.

The GEC entered into agreements with two media firms for placement of television and radio time. The first media firm was responsible for placing television and radio buys at the local level. The GEC did not have a written contract with this media firm and less than half of the payments to the media firm were supported by invoices as of close of fieldwork. According to the GEC's disbursements journal, $10,339,005.98 was paid to this media firm between July 27, 1988, and March 9, 1989. Given the information available, the Audit staff was unable to determine what portion of the payments to the media firm represented commissions. At the close of fieldwork, the media firm had not completed a reconciliation of the payments made by the GEC for the buys made and credits received for ads which did not run. The GEC did obtain a letter from the media firm in which the president of the media firm states that the GEC paid a fee of $225,000 plus 2% of all gross placement dollars which works out to a fee of approximately 4% of gross placement. The Audit staff was unable to verify the total amount of placements made by the media firm or the actual amount of commissions paid by the GEC.

The second media firm was responsible for network, syndication and cable television and network radio commercial time. The GEC had a written contract with the media firm which called for a commission of 1½% of the gross value of all commercial time planned, reserved, purchased and confirmed on behalf of the GEC. The contract also called for the GEC to reimburse the media firm for the costs of dubbing video and audio tapes at Agency's cost (net of commission or other charges) and travel outside of New York City. According to the GEC's disbursement journal, the GEC paid a net amount of $8,636,240.61 to the media firm during the period September 7, 1988 through November 3, 1988. Payments to the media firm were supported by notices numbered 1-60 which indicated the amount due the media firm. A recap of payments provided by the media firm indicates net payments received of $8,819,881.01, or $183,640.40 more than the amount reflected as paid based on our analysis of the GEC's records made available. GEC officials stated that the media records would be made available for Audit staff review. Regarding the commission charged the GEC by the media firms, a GEC official

stated that the GEC should be allowed to obtain the best rate available.

In the interim audit report the Audit staff recommended that the GEC provide the Audit staff access to the media firms' records in order to verify actual buys made and payments received by the media firms. In addition, the Audit staff recommended that the GEC obtain from the media firms the total amount received as commission for media placement and provide justification, to include copies of contracts with named clients and invoices, that the amount of commission paid to the media firms is reasonable and that a prohibited contribution has not been received.

The Audit staff was provided access to the records of both media firms. Regarding the first media firm which placed television and radio buys at the local level, the Audit staff was able to verify that $10,236,824.54 was invoiced by the media firm. Of that amount $9,688,438.13 represented buys and $202,191.62 represented commissions. The remaining amount invoiced was for media planning fees and other direct expenses incurred by the media firm. Based on these figures the GEC paid approximately a 2% commission for media buys.

A review of the second media firm's records disclosed that the firm received a net amount after credits of $8,819,881.01 from the GEC, representing network buys and commission. The Audit staff also verified that the GEC paid a commission of 1½% of the gross amount of buys.

Based on the review of the media firms' records and commissions paid by other presidential candidate committees deemed reasonable by the Commission, the commissions paid to the media firms appear reasonable and therefore no prohibited contribution resulted.

Recommendation #2

The Audit staff recommends no further action in this matter.

III. Findings and Recommendations Related to Title 2 of the United States Code - Dukakis/Bentsen General Election Legal and Accounting Compliance Fund

A. Partnership Contribution in Excess of Limitation

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which in the aggregate, exceed $1,000. In addition, Section 431(11) of Title 2 of the United States Code defines the term "Person" to include a partnership.

Section 110.1(e) of Title 11 of the Code of Federal Regulations, further notes that a contribution by a partnership

shall be attributed to the partnership and to each partner, and that the amount of a contribution(s) attributable to a partnership shall not exceed the $1,000 per election limitation.

A review of the Compliance Fund's receipt records revealed a $10,000 check drawn on a partnership account. Signed documents attached to the check indicate that the contribution was to be attributed to twelve individuals. Since the contribution was drawn on the partnership's check, the full amount ($10,000) is attributable to the partnership, and as such, an excessive contribution by the partnership of $9,000 results.

Compliance Fund officials acknowledged the excessive contribution at the exit conference and stated that a refund to the partnership would be made and contributions drawn on the named partners' personal accounts would be sought.

In the interim audit report the Audit staff recommended that the Compliance Fund submit evidence demonstrating that the contribution noted above is not in excess of the limitation or refund the excessive portion and present evidence of such refund (front and back of refund check) to the Audit Division.

In its response to the interim audit report, dated January 4, 1991, the Committee provided the Audit staff with a copy of a cancelled refund check payable to the partnership in the amount of $9,000. The response also contained the following explanation regarding the receipt of the contribution: "The excess contribution slipped through the Committee's rigorous procedures, and was refunded as soon as it was brought to the Committee's attention. The Committee wishes to note that numerous contributions were received totalling $3 million-plus. This single excessive contribution constituted the only such error. The refund is reflected in an appropriate filing by the Committee."

Recommendation #3

The Audit staff recommends no further action on this matter.

B. Unreported Transfers

Sections 434(b)(4)(B) and (E) of Title 2 of the United States Code, in part, require that each report disclose, for the reporting period and the calendar year, the total amount of all disbursements for authorized committees, transfers to other committees authorized by the same candidate and the repayment of all loans.

Sections 434(b)(2)(E) and (H) of Title 2 of the United States Code state, in part, that each report under this section shall disclose for the reporting period and calendar year, the total amount of all receipts, and the total amount of all

transfers from other authorized committees of the same candidate together with all other loans.

Section 9003.4(b)(2) of Title 11 of the Code of Federal Regulations states that a major party candidate may borrow from his or her legal and accounting compliance fund for the purpose of defraying permissible expenditures described in 11 CFR 9003.4(a).

As noted in Finding II.A.1., unreported transfer activity between the Compliance Fund and GEC resulted in a $880,000 understatement in reported receipts and disbursements. At the exit conference, GEC officials stated that the GEC disclosure reports would be amended to include the transfer activity.

On November 13, 1989, the GEC filed amended reports disclosing the $880,000 in transfers. The GEC's response to this matter is detailed at Finding II.A.1.

Recommendation #4

The Audit staff recommends no further action on this matter.

C. Contribution Records

Section 432(c) of Title 2 of the United States Code states in part that the treasurer of a political committee shall keep an account of all contributions received by or on behalf of such political committee along with the name and address of any person who makes any contribution in excess of $50, together with the date and amount of such contribution by any person and the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of such contribution.

The Compliance Fund maintained photocopies of contributor checks filed in deposit order. Our review of these records disclosed that documentation supporting $752,961.05 in contributions was not available. Compliance Fund officials stated they would request microfilm copies of the contributor checks from the bank.

In the interim audit report the Audit Staff recommended that the Compliance Fund provide for Audit Staff review, documentation supporting the $752,961.05 in contributions.

On December 7, 1989, the Committee forwarded microfilm copies of contributor checks and deposit slips which documented the contributions noted above.

Recommendation #5

The Audit staff recommends no further action on this matter.

IV. Findings and Recommendations Related to Title 26 of the United States Code - Dukakis/Bentsen Committee, Inc.

A. Expenditure Limitation

The Act provides at 2 U.S.C. §441a(b)(1)(B) that no candidate for the office of President of the United States who is eligible under section 9003 of Title 26 (relating to condition for eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $20,000,000 in the case of a campaign for election to such office as adjusted for increases in the Consumer Price Index. Further, 2 U.S.C. §441a(b)(2)(B) states that an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by:

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

The expenditure limitation for the 1988 general election for the office of President is $46,100,000, computed in accordance with 2 U.S.C. §441a(c).

The Audit staff analyzed the GEC's reports and activity covering the period from inception through June 30, 1991, with respect to expenditures subject to the $46,100,000 limitation. The Audit staff also reviewed the GEC's calculation of expenditures subject to the limit submitted as part of its response to the interim report. The results of our analysis appear below.

Dukakis/Bentsen Committee, Inc.
Expenditures Subject to Limitation at June 30, 1991
Audit Analysis

1.		Reported Operating Expenditures Subject to Limitation from Inception through June 30, 1991	$ 53,155,440.13
		Adjustments to Reported Totals	
2.	Less:	Reported Offsets to Operating Expenditures	(7,424,074.61)
		Media Reimbursements Offset Against Payables	(229,035.49)
3.	Less:	Accounts Receivable - Press	(71,155.97)
		- U.S. Secret Service Adjustment	(290,906.36) a/
4.	Add:	Accounts Payable	86,525.71 b/
		Payables Offset by Media Reimbursements	229,035.49
5.	Add:	Reimbursements Due Compliance Fund from GEC	17,942.41 c/
		Adjustment for Consulting Fees Includable in P/R Base	(31,229.24) c/
6.	Add:	Reclassification of Media Costs to Exempt Compliance	511,469.68 d/
7.	Add:	In-Kind Legal Services - Electoral College Memorandum	65,880.00 e/
			$46,019,899.75

a/ See 1. Accounts Receivable, below, for explanation of adjustment.

b/ According to correspondence received from the GEC's attorney, Eastern Air Lines, Inc. is entitled to an ex parte entry of Judgment against the GEC in the amount of $200,000. According to the court order, signed 9/16/91, the settlement reflects a reasonable settlement of a bona fide dispute over the billings by Eastern Air Lines, Inc. to the GEC. Payment of the $200,000 is to be made as follows: $80,000 by GEC and $50,000 by the Democratic National Committee immediately upon execution of the Stipulation of Settlement agreement; $10,000 on the first of each month thereafter until Eastern Air Lines, Inc. has received an additional $70,000. The DNC's payment of $50,000 was made pursuant to 2 U.S.C. §441a(d)(2); the DNC may also pay the balance of $70,000 (in equal monthly installments); however, the GEC stated it will recognize a contingent liability for the balance of $70,000. The Audit staff will monitor the status of this contingency and if warranted, revise the above analysis accordingly. According to reports filed by the DNC, as of June 30, 1991, there remains $441,902.80 of 441a(d)(2) spending authority relative to the 1988 presidential election. The GEC also oves its travel agency $6,495.71.

c/ This amount represents expenses charged to compliance which should have been operating (See 4. In-Kind Legal Services). Also, see 3.a. Consulting Fees Included in Payroll Base, for an explanation of this adjustment.

d/ The GEC reclassified this amount from Operating Expenditures to Exempt Legal and Accounting. (See 5. November 6, 1989 Amendment - 2 U.S.C. 441d(a) Disclaimer.)

e/ Represents costs associated with associate lawyers, paralegals, and summer associates in preparing the Electoral College Memorandum. (See 4. In-Kind Legal Services.)

Based on the analysis, it appears that the GEC has not exceeded the limitation at 2 U.S.C. §441a(b)(1)(B).2/

Discussed below are adjustments made by the Audit staff. These adjustments are contrary to the GEC's position.

1. Accounts Receivable

The Audit staff reduced the amount of the GEC's accounts receivable by $523,555.36. This reduction is necessary since this amount, billed the Secret Service by the GEC for travel with the candidate, is not collectible. The GEC billed the Secret Service, using a pro rata cost figure, for travel with the candidate; however, the Secret Service paid the lower of the pro rata share or first class airfare. According to the GEC Counsel, the Secret Service payments were in accordance with guidelines provided in Comptroller General Decision B-130961.141 dated July 5, 1977.3/ The Secret Service provided the GEC during the campaign with a document entitled "Campaign Committee Aircraft Billing Procedures" which outlined the procedures for billing the Secret Service.

In a letter dated October 18, 1989, the GEC's Counsels argue that since all passengers, including campaign personnel, are billed at first class airfare while traveling with the incumbent on government conveyance, that the incumbent does not have to cover, as the GEC has, the difference between the Secret Service's actual pro rata cost and the cost per its first class airfare reimbursement policy. The GEC also argues that the amount that the Secret Service refuses to reimburse should not be treated as an expenditure subject to the limit.

The Commission's regulations at 11 C.F.R. §9002.11(a)(1) define a qualified campaign expense as any expenditure incurred to further a candidate's campaign for the office of President of the United States. Section 9004.6 of Title 11, of the Code of Federal Regulations provides that expenditures for transportation made available to media are qualified campaign expenses subject to the overall expenditure limitation. Campaigns are permitted to obtain reimbursements from media personnel for travel expenses paid by the campaign. A campaign may deduct from the amount of expenditures subject to the overall expenditure limitation the amount of reimbursements received. However, if the

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2/ The Commission-approved interim audit report contained a preliminary calculation that the GEC exceeded the overall limit by $958,677.25.

3/ According to the decision, the method used by the Secret Service to determine reimbursement is discretionary with the Secretary of the Treasury.

campaign does not receive reimbursement any amount paid for transportation of media personnel will be subject to the overall expenditure limitation.

References to the Secret Service were deleted from Section 9004.6 in 1983. The Explanation and Justification for that revision of the regulation explains that: "All references to reimbursement for transportation ... made available to the Secret Service ... have been deleted from the section. Other government regulations govern payment for those expenditures." 48 Federal Register 31824 (July 11, 1983)

As stated in the interim audit report, it was the opinion of the Audit staff that

> the amounts paid by the GEC over and above the amount reimbursed by the Secret Service are costs inherent with running a campaign for the presidency; are made to influence the election; and are qualified campaign expenses subject to the limitation. Further, the $523,555.36 included by the GEC in its accounts receivable as of September 30, 1989, is uncollectible and as such, the accounts receivable total has been adjusted by the Audit staff with the resultant amount flowing to expenditures subject to the limitation.

In response to the interim audit report the GEC sets forth a number of arguments disputing the treatment of the Secret Service Receivable. According to the GEC, the Audit staff's "bold assertion" that the GEC chose to incur the expense of Secret Service protection because it would somehow exert a positive "influence" on the candidate's chances for election, ignores both the Hatch Act and Secret Service protection guidelines. The GEC argues that such a position would violate the Hatch Act which prohibits federal employees from participating in any campaign-related activities and Secret Service Guidelines which limit agents to those activities related solely to the safety and security of the candidate.

At no point in the interim audit report did the Audit staff state that Secret Service protection would exert a positive influence on the campaign. Rather, the interim audit report merely states that the expenditures for Secret Service protection are inherent with running a campaign and thus are qualified campaign expenses and, less any reimbursements received, are subject to the overall expenditure limitation.

The GEC further charges that the Audit staff's argument is illogical because it is based on the assertion that whether the Secret Service protection influences an election turns entirely on who pays for it. If Treasury reimburses the GEC it is not a qualified campaign expense, but if Treasury does not reimburse the Committee then it is a qualified campaign expense.

The Audit staff's position is that the expenditure for Secret Service protection is a qualified campaign expense just as expenditures for the cost of press travel are qualified campaign expenses. Generally, reimbursements received from either the press or Secret Service may be deducted from the amount of expenditures subject to the overall expenditure limitation; however, if the GEC does not receive reimbursement then the amount chargeable to the overall expenditure limitation is not reduced.

The GEC's response continues that the consequences of the Audit staff's position are both partisan and Draconian. The fact that the incumbent and anyone flying on government aircraft with the incumbent is only charged first class airfare provides the incumbent with an unfair advantage. Further under the Audit staff's interpretation, the GEC, in addition to having to pay a portion of the cost of the Secret Service travel, is faced with a repayment to the U. S. Treasury because the expenditures caused the overall spending limitation to be exceeded.

As noted in the interim audit report, the GEC was aware of the Secret Service's reimbursement policy during the campaign. Thus this amount, like any other expense, required consideration when formulating the campaign budget. It is not accurate to state that this one category of expense, which was known in advance, caused the GEC to exceed the spending limitation because the GEC does not believe that the charge should be applicable to the spending limitation. It is the Audit staff's opinion that the unreimbursed amount should be treated as any other uncollectible receivable whether it be due from the Secret Service, press, or any other vendor.

The GEC further argues that under the Audit staff's position the GEC had two choices: One, forego the protection, or two, set aside at the beginning of the campaign an amount to compensate for any amounts the Secret Service might not pay. According to the GEC, the second choice would have required cutting back on other expenditures which would then give the incumbent an unfair advantage on top of the advantage he already had of traveling on less expensive government aircraft. The GEC states that while the FEC regulations permit a committee to seek reimbursement from the Secret Service for the cost of travel, the Department of Treasury is only willing to pay the pro rata share or first class airfare, whichever is lower.

The GEC is correct in stating that the regulations allow the seeking of reimbursement, however the Commission has no authority over the reimbursement policy set by the Department of Treasury. This was recognized in the Explanation and Justification of the revision to 11 C.F.R. Section 9004.6 whereby it was noted that other government regulations govern payment for those expenditures.

Finally, the GEC argues that payment of expenses for the transportation costs of the Secret Service should not be treated as qualified campaign expenses because the services provided did not in any way further the election of the candidate. Rather the GEC asks the Commission to disregard the uncollected Secret Service receivable as not being a qualified campaign expense and to not impose a repayment obligation.

The argument that candidate security in no way furthers the candidate's election is without merit. Such service, in the Audit staff's opinion, allows the candidate to safely conduct his campaign and, therefore, does further his election.

Moreover, an examination of the composition4/ of the Secret Service receivable (uncollectible per the Audit staff) recognized by the GEC reveals that with respect to the trips handled by the travel agency, $223,809.40 of the $230,114.81, or 97⅛% of the receivable, occurred as a result of an 11.4% "direct cost" mark-up and a 10% estimated cost mark-up applied to actual cost. In other words, the GEC was reimbursed by the Secret Service for approximately 97⅛% of the actual cost of transporting Secret Service personnel. The uncollected amount basically represents other costs of the charter program.

For the trips handled by the GEC in-house, an uncollectible portion of $293,440.56 exists. The vast majority of these charter trips are identified as "KDD" [the candidate's spouse]. Of the 105 separate trip legs billed, all legs were recorded as having 14 or fewer passengers.

In most cases, there were three Secret Service agents and less than four media passengers. The remaining passengers were campaign personnel. With so few "billable" seats, the Secret Service uncollected amount is understandable, given the Secret Service's policy of reimbursing first class air fare or pro rata cost, whichever is less. In the Audit staff's opinion, the GEC's decision to utilize chartered aircraft having minimal

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4/ According to an Accounts Receivable Summary dated June 14, 1989, prepared by the GEC, the Secret Service was billed $1,216,752.62 for flights handled by the travel agency, with Secret Service reimbursements totaling $986,637.81, uncollectible portion $230,114.81 (18.9%). For trips handled by the GEC in-house, the Secret Service was billed $397,681.78 with reimbursements received totaling $104,241.22, uncollectible portion $293,440.56 (73.79%).

seating capacity and/or to schedule trips at less than full seating capacity inevitably results in a very high pro rata cost per passenger.5/

This decision on the part of the GEC, given the Secret Service's reimbursement policy was known, must be viewed as a decision by the GEC to incur these expenses to further the candidate's election.

The regulations do not provide for such treatment of expenditures as suggested by the GEC. Under 11 C.F.R. Section 9007.2, if the Commission determines that a candidate has incurred qualified campaign expenses in excess of the overall limitation then the amount of such expenses is repayable to the U. S. Treasury.

In summary, the regulations in effect for the 1988 election cycle form the basis for the opinion contained in the interim report relative to the uncollectible receivable from the Secret Service. The GEC's arguments contained in its response to the interim report are not persuasive in the light of these regulatory provisions. The $523,555.36 not reimbursed by the Secret Service is viewed as uncollectible.

However, on October 24, 1991, the Commission decided to apply its policy relative to the 1992 election cycle to this matter and directed the staff to recalculate the amount of the unreimbursed Secret Service receivable which may, based on the 1992 regulations, be considered not subject to the overall expenditure limitation. (See 11 C.F.R. §9004.6(a), Federal Register, p. 35920, July 29, 1991.)

The Audit staff calculated the correct billable amount in accordance with the above cited 1992 regulation. Given a billable amount of $1,381,785.39 relative to actual transportation provided and after subtracting the actual reimbursements received ($1,090,879.03), the GEC may view $290,906.36 as not chargeable against the overall expenditure limitation.

The 1992 regulations at 11 C.F.R. §9003.3(a)(2)(i)(H) state, in part, that one of the purposes for which contributions to the legal and accounting compliance fund may be used is to defray unreimbursed costs incurred in providing transportation and services for the Secret Service pursuant to 11 CFR 9004.6.

5/ The GEC applied a 10% mark-up to actual air transportation cost to arrive at the total cost to be pro rated. Given the 10% mark-up, the uncollected amount may include as much as $39,000, which does not represent direct costs of providing air transportation to the Secret Service.

Accordingly, it appears that the Compliance Fund may reimburse the GEC $290,906.36 in order to defray the unreimbursed costs incurred and paid by the GEC in providing transportation to the Secret Service.

The Audit staff has included an adjustment of $290,906.36 to expenditures subject to the limitation at page 10, and noted the adjustment for NOQCE purposes.

2. Disputed Payables

The Audit staff, in the interim report, included bills totalling $401,016.55 from the travel agency which handled travel for the GEC. The GEC has not paid the bills because, according to GEC officials, the travel agency has not documented sufficiently the expenses billed.

In response to the interim audit report, the GEC states that the accounts payable total contained in the Statement of Net Outstanding Qualified Campaign Expenditures (NOQCE) included in the interim audit report should be revised. The GEC explains that any amount in dispute with the travel agency was included in the $161,430.73 also included in the NOQCE as a payable to the travel agency.

The Audit staff reviewed records made available relative to the accounts payable, and reviewed reported activity through June 30, 1991. Our analysis indicates that, as stated by the GEC, a duplication occurred. The amount in dispute with the travel agency has been resolved as of June 30, 1991.

3. Reimbursement Due Compliance Fund

a. Consulting Fees Included in Payroll Base

The GEC allocated 5% of its national payroll to exempt compliance pursuant to Alternative 2 - Allocation of National Campaign Office Payroll, Payroll Taxes and Overhead Expenses contained in the June 1988 edition of the Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing.

Included in the base number from which the GEC's 5% allocation figure was calculated were costs associated with an expense code entitled "consultants." A review of charges to the "consultants" expense code revealed that in addition to consulting fees, payments for media fees, travel expenses, rent, background investigations, computer services, production fees, etc. were included in the expense code total. The Audit staff reviewed all charges to the expense code and deleted all charges not related to consulting services paid to an individual. This procedure resulted in a reduction of the amount of payroll chargeable to compliance of $78,224.04. Since the GEC had already

been reimbursed by the Compliance Fund, this amount was included in the $128,850.62 classified as reimbursements due the Compliance Fund in the interim report.

A copy of the Audit staff's workpapers was provided to the GEC staff after the close of fieldwork. GEC officials had no comment at the exit conference regarding the Audit staff's adjustments.

In response to the interim audit report the GEC stated that it accepts the Audit staff's finding in this matter.

It should be noted that on October 24, 1991, the Commission determined that certain costs initially excluded may be included in the base number. Accordingly, the Audit staff reviewed the charges initially excluded and identified $624,584.79 in charges which, based on the Commission's decision are includable in the base number.

Therefore, the above reduction of $78,224.04 ($1,564,480.75 x .05) is revised to $46,994.80 (($1,564,480.75 - 624,584.79) x .051.

Since the GEC has already reported the $78,224.04 as chargeable to the expenditure limitation, an adjustment of $31,229.24 ($78,224.04 - $46,994.80) is reflected at page 10, line 5 and explained in note c/.

b. Printing Cost for Holiday/Thank You Notes

Also included in the amount due the Compliance Fund is $17,995.95 in printing costs for 125,000 holiday/thank you cards paid from the Compliance Fund. The postage costs ($29,312.75) were paid by the GEC and are included in total expenditures subject to the limit.

In a letter dated November 13, 1989, the GEC's Counsel states that the expenditures were for stationery and postage for thank you notes from Governor Dukakis to 20,0006/ committee staff and volunteers. The cards were sent between November 29, 1988, and February 27, 1989. The GEC's Counsel states that the expenditures should be treated as qualified campaign expenses.

It is the opinion of the Audit staff that since the expenditures for postage for the cards are a qualified

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6/ No explanation is available at this time for the difference in the number of cards calculated by the Audit staff and the number mentioned by the GEC's counsel.

campaign expense, the printing costs are also a qualified campaign expense which must be reimbursed by the GEC to the Compliance Fund.

In response to the interim audit report, the GEC stated that it accepts the Auditor's findings. On January 31, 1991, the GEC reported a $17,995.95 reimbursement to the Compliance Fund.

4. In-Kind Legal Services

In the interim audit report the Audit staff included $76,905.50 in expenditures subject to the limitation representing the value of legal services provided by a law firm for work conducted on an update of an Electoral College memorandum. According to a letter, dated September 14, 1988, from a law firm to the GEC, an agreement was reached between the law firm and the GEC whereby the law firm agreed to update a 1980 Electoral College memorandum. The letter states that the services to be provided do not seem to be contributions because they do not relate to a general election as defined.

On June 9, 1989, the GEC issued a $17,942.41 check to the law firm in payment of expenses associated with the law firm's work on the memorandum.7/ The expenses were identified as courier services, duplicating, postage, transportation, meals, secretarial services, etc. In a letter dated April 25, 1989, the law firm indicated that as of the close of the year, $76,905.50 in professional services had been incurred but no charges had been made. These charges were comprised of hourly rates for partners, associates, paralegals, and summer associates and were exclusive of the $17,942.41 billed to the GEC.

The only reporting relative to this activity was the payment of $17,942.41 which was reported by the GEC as a compliance expense. When questioned about the activity, a GEC official stated that when the firm offered to do the work it was presumed that all the work would be volunteer activity. The GEC stated that the activity was not compliance related and that it is the position of the GEC that the activity is volunteer exempt activity pursuant to 11 C.F.R. §100.7(b)(3). On October 23, 1989, the GEC sent a letter to the law firm requesting confirmation that the services provided were exempt volunteer activity.

In a letter dated November 1, 1989, the law firm stated that "all lawyers who work on a pro bono matter accepted by this firm do so on a voluntary basis, but their compensation from the firm does not vary depending on how much pro bono or regular work they do for the firm." (Emphasis in original.) The letter

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7/ According to documentation provided by the GEC, this bill should have been paid by the Compliance Fund.

goes on to say that the law firm relied on 11 C.F.R. §100.7(b)(13) which exempts from the definition of contribution legal services rendered to or on behalf of a political committee of a political party if the person paying for the services is the regular employer of the individual rendering the services and such services are not attributable to activities which directly further the election of any designated candidate for Federal office. Based on the law firm's response, it is unclear why the law firm billed and was paid for expenses purportedly not attributable to activities which directly furthered the election of the candidate.

In the interim audit report the Audit staff recommended that the GEC provide evidence that the law firm's activity is not a contribution to the GEC. This evidence should include but is not limited to an explanation of the work performed by the law firm's personnel on the Electoral College memorandum and an explanation as to why the GEC was billed for the expenses associated with the services performed. In addition a copy of the Electoral College memorandum should also be provided.

In response to the interim audit report the GEC provided copies of correspondence between the GEC and the law firm regarding the Electoral College memorandum and a copy of the memorandum itself. The memorandum detailed requirements of the Electoral College voting process and noted any irregularities the GEC should be aware of which could result in the candidate losing Electoral College votes. The law firm also prepared a summary of applicable laws in each state to accompany the memorandum.

The GEC argues that "Even if the 1988 election had been a matter for the Electoral College to decide, the legal work should not be treated as a 'contribution' (which is defined at 11 C.F.R. Section 100.7(a) to include 'services ... made for the purpose of influencing any election to federal office') because an Electoral College dispute is not an 'election' as the term is defined by 11 C.F.R. Section 100.2(b). As Mr. Josephson reiterates in his letter of November 1, 1989, the Electoral College election, which is the only election with respect to which this firm rendered any legal services and incurred any reimbursements, is not a general, primary, run-off, caucus or convention, special or any other kind of election within the meaning of 11 C. F. R. Section 100.2." The response continues that since the work involved did not influence the general election that it does not matter whether the law firm's work was volunteered or not since it is outside the purview of the Commission.

The Audit staff disagrees with the argument that the work performed by the law firm did not influence the general election. It is the opinion of the Audit staff that the Electoral College is part of the entire general election process and

expenses incurred by the GEC related to the Electoral College are qualified campaign expenses which are subject to the overall expenditure limitation.

Regarding the GEC's argument that the legal work performed by the law firm is exempt volunteer activity under 11 C.F.R. Sections 100.7(b)(3) and (13), the Commission has in past advisory opinions allowed partners in law firms to work for presidential campaigns without creating a contribution from the partnership when the partner volunteers his services to the campaign and his compensation is based on a share in the partnership, not related to his working hours. (See AO 1979-58 and AO 1980-107.) Therefore, the activities of partners involved in preparing the Electoral College memorandum may have been permissible volunteer activity, however the activities of other law firm employees do not appear to be exempt volunteer activity because the law firm paid regular compensation to all of the associate lawyers and support personnel for the time they spent on legal work for the GEC. According to a billing statement prepared by the law firm, billable costs totalling $11,017.50 relating to one partner were included in the $76,905.50. The remaining $65,888.00 represented work performed by associates, paralegals, and summer associates, and other personnel.

The Audit staff has included in its analysis of expenditures subject to the limitation, the $65,888 representing compensation paid to non-partners as an in-kind contribution. The associated expenses, totalling $17,942.41, billed to the GEC are also viewed as qualified campaign expenses subject to the overall limitation, and therefore are included as such in the Audit staff's calculation.

5. November 6, 1989 Amendment - 2 U.S.C. 441d(a) Disclaimer

On November 6, 1989, the GEC filed an amended disclosure report in which $511,469.68 was reclassified from line 23 - Operating Expenditures [chargeable to overall spending limit] to line 26 - Exempt Legal and Accounting Disbursements. The GEC provided the following in its response to the interim report:

> The FECA at 2 U.S.C. Section 441(a) [441d(a)] requires in a "clear and conspicuous manner" the presence of a "Paid for by..." disclaimer "whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate... through... any broadcast station..."
>
> The Regulations at 11 C.F.R. Section 9003.3 permit presidential committees to deduct from the expenditure limitations legal and accounting costs that are provided solely to ensure compliance with the FECA or the public

financing provisions. These "services" have been construed to include, inter alia, the costs of computer hardware and software, a proportional amount of the salaries of all employees -- not just lawyers and accountants -- as well as a proportional amount of rent, utilities, and other overhead costs.

Thus, the FEC has broadly construed the exemption for "legal and accounting services to ensure compliance with the Act" as encompassing costs reasonably and substantially associated with complying with the FECA. Under these circumstances the Committee considers its exclusion from the expenditure limitation for the costs of the disclaimer as falling with the law. Certainly, legally required disclaimer costs are far more proximately and substantially connected to "compliance" than portions of utility costs, office rentals and payroll costs of non-legal and non-accounting employees.

The amount of cost that the Committee deducted was based on the length of time the disclaimer remained on the television screen or was heard in a radio advertisement. A 30-second TV commercial which contained a 1-second disclaimer, for example, resulted in 1/30 of the costs of the commercial being treated as an exempt compliance expenditure.

The Committee's formula was based on Advisory Opinions 1981-3 and 1978-46, in which the Commission indicated that a reasonable allocation formula (for allocating costs between federal and non-federal candidates) could be based on a column inches or space in a newsletter. Similarly, in Advisory Opinion 1982-5, the Commission stated the costs of a national party conference could be allocated on the basis of the time in the agenda for activities pertaining to federal elections.

These Advisory Opinions were cited with approval in the General Counsel's draft Advisory Opinion 1986-6, which concerned Senator Gore's proposed plan to allocate a portion of his TV advertising to the fundraising exemption. The Commission overruled the legal staff's recommendation that the percentage should be based on a "column inches" analysis, and agreed to a higher percentage of 50%. The Commission's rationale was that the fundraising message was an integral part of the entire ad.

Thus, the Committee is justified in claiming a much larger percentage of the ads as a compliance exemption. The Committee's time-based allocation is reasonable and indeed, conservative.

The GEC's reclassification of media costs is incorrect and an adjustment to the GEC's reported figures, as amended, has been made.8/ The Commission has previously considered a similar set of circumstances in two 1988 primary campaigns and found the claims for exemption without merit (see Final Audit Reports - Dole for President, Inc. and Paul Simon for President).

In this instance, although the GEC cites the Act, Regulations, and several Advisory Opinions which it believes supports its position, our opinion remains the same - the GEC's position is without merit.

The Commission's regulations provide that an amount equal to 10% of salaries and overhead may be initially paid from the candidate's federal funds account and later reimbursed by the compliance fund account (see 11 C.F.R. §9003.3(a)(2)). Section 9003.3(a)(2) delineates the costs which may be exempt compliance costs. Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with the Act. Media costs are not included as potential exempt compliance costs.

The scope of the compliance exemption is strictly limited to expenditures with a purely compliance purpose and does not include the cost of an expenditure which merely complies with the Act. The presence of an informative disclaimer in a commercial does not transform the cost of a political advertisement into a compliance cost.

Concerning the Advisory Opinions cited by the GEC, to the extent that the Committee relies on AO 1988-6, its argument lacks merit. That opinion concerned the fundraising exemption, not the compliance exemption. The fundraising exemption is broader than the compliance exemption, and has different requirements. The Commission has delineated narrow rules governing the exemption for compliance costs, and the media costs at issue here do not fall within the parameters of these rules.

The Advisory Opinions cited by the GEC as the basis for the "time based" formula it used to "allocate", in the GEC's view, the compliance portion of media costs may well be useful in support of an allocation formula for costs which in fact may be allocated.

However, in the case at hand, no portion of the media cost may be allocated to compliance, regardless of what allocation formula is used.

8/ If this reclassification were permissible, in order for the amount (or portion thereof) not to be chargeable to the overall limit, a reimbursement would have to be made to the GEC by the Compliance Fund. To date, no reimbursement has been reported.

Summary

Based on our review of (a) the GEC's response, (b) reported activity from 10/1/89-6/30/91, and (c) applicable Commission decisions, it appears that the GEC has not exceeded the overall limit. Expenditures subject to the overall limit calculated by the Audit staff as of 6/30/91 total $46,019,899.759/, approximately $80,000 under the $46,100,000 limit in effect for the 1988 general election.10/

Recommendation #6

No further action is recommended.

B. Interest Earned on Investment of Federal Funds

The regulations at 11 C.F.R. §9004.5 state, in part, that investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investment, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary.

During 1988, the GEC received $550,360.37 in interest generated from the investment of federal funds. The GEC paid $215,677.17 in federal and state taxes on the interest received leaving net income of $334,683.20.

In the interim audit report the Audit staff recommended that, absent a showing to the contrary by the GEC,the Commission make an initial determination that the $334,683.20 be repaid to the United States Treasury.

On February 14, 1991, the GEC forwarded checks totalling $334,683.20 for repayment of the interest.

Recommendation #7

It is recommended that the Commission make an initial determination that $334,683.20 is repayable to the United States Treasury in accordance with 11 C.F.R. §9004.5. The Committee satisfied this repayment obligation on February 14, 1991.

9/ This amount is subject to change based on a review of financial activity post 6/30/91.

10/ The adjustment <$290,906.36> to expenditures subject to the overall limit, described in section 1 above, does not involve the receipt of funds by the GEC; therefore, the repayment provision at 11 C.F.R. §9007.2(b)(3) regarding unspent funds is not applicable.

C. Determination of Net Outstanding Qualified Campaign Expenses

Section 9007(b)(2) of Title 26 of the United States Code states that if the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount.

In October 1989, during the latter stages of the fieldwork, the GEC presented a Statement of Net Outstanding Qualified Campaign Expenses ("NOQCE") to the Audit staff which reflected the GEC's financial position at October 1, 1989. In its response to the interim audit report, the GEC submitted a revised NOQCE as of September 30, 1989, revised January 2, 1991. The Audit staff reviewed the GEC's NOQCE statement, related documents, and disclosure reports covering activity through June 30, 1991, and developed a revised statement as of June 30, 1991. Noted below is the Audit staff's NOQCE along with an explanation of any differences.

Dukakis/Bentsen Committee, Inc.
Net Outstanding Qualified Campaign Expenses
(Audit Analysis through 6/30/91)

ASSETS			
Cash in Bank as Reported	$ 8,494.52		
Accounts Receivable - Press	71,155.97		
Amounts Due from Compliance Fund	370,507.42 a/		
Total Assets		$450,157.91	
LIABILITIES			
Accounts Payable	86,525.71 b/		
In-Kind Contribution - Legal Services	65,888.00 c/		
Amounts Due to Compliance Fund	209,683.20 d/		
Total Liabilities		$362,096.91	
Net Outstanding Qualified Campaign Expenses			$88,061.00 e/

a/ Represents amount reimburseable by the Compliance Fund after accounting for necessary adjustments explained in Finding IV.A.

b/ According to correspondence received from the GEC's attorney, Eastern Air Lines, Inc. is entitled to an ex parte entry of Judgment against the GEC in the amount of $200,000. According to the court order, signed 9/16/91, the settlement reflects a reasonable settlement of a bona fide dispute over the billings by Eastern Air Lines, Inc. to the GEC. Payment of the $200,000 is to be made as follows: $80,000 by GEC and $50,000 by the Democratic National Committee immediately upon execution of the Stipulation of Settlement agreement; $10,000 on the first of each month thereafter until Eastern Air Lines, Inc. has received an additional $70,000. The DNC's payment of $50,000 was made pursuant to 2 U.S.C. §441a(d)(2); the DNC may also pay the balance of $70,000 (in equal monthly installments); however, the GEC stated it will recognize a contingent liability for the balance of $70,000. The Audit staff will monitor the status of this contingency and if warranted, revise the above analysis accordingly. (By check dated 10/31/91, the DNC paid the first $10,000 installment.) According to reports filed by the DNC, as of June 30, 1991, there remains $441,902.80 of 441a(d)(2) spending authority relative to the 1988 presidential election. The GEC also oves its travel agency $6,495.71.

c/ This figure represents the value of services provided by a law firm. (See Finding IV.A.4.)

d/ A repayment ($125,000) from the GEC was made on February 11, 1991, and on February 13, 1991, the Compliance Fund paid the remainder ($209,683.20) of the interest repayment.

e/ This amount is subject to change. A difference of approximately $8,000 between the calculated surplus and the comparable figure with respect to expenditures subject to the overall limit is unexplained.

Conclusion

The NOQCE statement presented above reflects a calculated surplus position. However, no repayment pursuant to 11 C.F.R. §9007.2(b)(3) is required.11/

11/ See note 8 at page 23 for additional information.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 15, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Mary Tabor
Attorney

SUBJECT: Final Repayment Determination for the Dukakis/Bentsen Committee, Inc. (LRA #354)

On November 22, 1991, the Commission made an initial determination that the Dukakis/Bentsen Committee, Inc. ("the Committee") must repay to the United States Treasury $334,683.20 representing the interest earned on the investment of federal funds. The initial determination was contained in the Commission's Final Audit Report, sent to the Committee by letter dated November 26, 1991.

The letter accompanying the initial determination informed the Committee of its right under 11 C.F.R. § 9007.2(c)(2) to dispute such determination by submitting legal and factual materials within 30 days of receipt of the determination. The letter also noted that even though the repayment had already been made in full, the Committee could still elect to dispute the Commission's determination that a repayment is not required. The Committee has not responded to the Final Audit Report.

Section 9007.2(c)(1) provides that an initial determination not disputed within the time period provided "will be considered a final determination of the Commission." Accordingly, the Office of General Counsel recommends that

the Commission conclude that the initial repayment determination for Governor Michael S. Dukakis, Senator Lloyd Bentsen, and the Dukakis/Bentsen Committee has become a final repayment determination and approve the attached letter notifying the Committee. Attachment 1.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Conclude that the initial repayment determination for Governor Michael S. Dukakis, Senator Lloyd Bentsen, and the Dukakis/Bentsen Committee, Inc. has become a final repayment determination under 11 C.F.R. § 9007.2(c)(1); and

2. Approve the attached letter notifying the Dukakis/Bentsen Committee, Inc. of this decision.

Attachment

Proposed letter to the Committee.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Michael S. Dukakis
Dukakis/Bentsen Committee, Inc.
85 Perry Street
Brookline, MA 02146

Dear Governor Dukakis:

On November 22, 1991, the Commission made an initial determination that the Dukakis/Bentsen Committee, Inc. ("the Committee") must repay to the United States Treasury $334,683.20 representing the interest earned on the investment of federal funds. The initial determination was contained in the Commission's Final Audit Report, which set forth the legal and factual basis for the determination. The Final Audit Report was forwarded to the Committee on November 26, 1991.

The letter accompanying the initial determination informed the Committee of its right under 11 C.F.R. § 9038.2(c)(2) to dispute such determination by submitting legal and factual materials within 30 days of receipt of the determination. The letter also noted that the Committee had already made the required repayment, and that no additional repayment is necessary. A response has not been received from the Committee. Section 9038.2(c)(1) provides that an initial determination not disputed within the time period provided "will be considered a final determination by the Commission." Since the Committee has not disputed the Commission's initial determination, this letter is to inform you that the Commission's initial repayment determination has become final.

ATTA...
Page 1

Should you have any questions regarding the Commission's determination, please contact Ms. Kim L. Bright-Coleman, Associate General Counsel, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Joan D. Aikens
Chairman

cc: Robert A. Farmer, Treasurer
Dukakis/Bentsen Committee, Inc.

ATTACHMENT 1
Page 2 of 2

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Michael S. Dukakis
Dukakis/Bentsen Committee, Inc.
85 Perry Street
Brookline, MA 02146

Dear Governor Dukakis:

On November 22, 1991, the Commission made an initial determination that the Dukakis/Bentsen Committee, Inc. ("the Committee") must repay to the United States Treasury $334,683.20 representing the interest earned on the investment of federal funds. The initial determination was contained in the Commission's Final Audit Report, which set forth the legal and factual basis for the determination. The Final Audit Report was forwarded to the Committee on November 26, 1991.

The letter accompanying the initial determination informed the Committee of its right under 11 C.F.R. § 9038.2(c)(2) to dispute such determination by submitting legal and factual materials within 30 days of receipt of the determination. The letter also noted that the Committee had already made the required repayment, and that no additional repayment is necessary. A response has not been received from the Committee. Section 9038.2(c)(1) provides that an initial determination not disputed within the time period provided "will be considered a final determination by the Commission." Since the Committee has not disputed the Commission's initial determination, this letter is to inform you that the Commission's initial repayment determination has become final.

Should you have any questions regarding the Commission's determination, please contact Ms. Kim L. Bright-Coleman, Associate General Counsel, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Joan D. Aikens
Chairman

cc: Robert A. Farmer, Treasurer
Dukakis/Bentsen Committee, Inc.

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