




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 1999

MEMORANDUM

TO: Ron M. Harris
Press Officer
Press Office

FROM: Robert J. Costa 
Assistant Staff Director
Audit Division

SUBJECT: Public Issuance of the Report of the Audit Division on
Kemp for Vice President

Attached please find a copy of the final audit report on Kemp for Vice President which was approved by the Commission on May 13, 1999.

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

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

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REPORT OF THE AUDIT DIVISION
ON
KEMP FOR VICE PRESIDENT

Approved May 13, 1999



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

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**REPORT OF THE AUDIT DIVISION
ON
KEMP FOR VICE PRESIDENT**

EXECUTIVE SUMMARY

Kemp for Vice President (KVP) originally registered with the Federal Election Commission on August 7, 1996 as the 1996 Vice Presidential Convention Expense Committee. On August 13, 1996 an amended Statement of Organization was filed changing its name to Kemp for Vice President.

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) and §9039(b) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out its responsibilities under these chapters.

The findings of the audit were presented to KVP at a conference held on April 21, 1998 and in the Exit Conference Memorandum. KVP's responses to those findings are contained in the audit report.

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

CONTRIBUTIONS RECEIVED TO RETIRE PRIMARY DEBT — 11 CFR § 110.1(b)(3)(i) and (ii) and § 113.2(c). After the Republican National Convention KVP accepted \$100,000 of contributions in excess of its net debt and transferred the money to the National Republican Senatorial Committee (NRSC), describing it as excess campaign funds. Contributions received after the date of the relevant election in excess of net debt may not be treated as excess campaign funds. KVP is required to request a refund from the NRSC, and either refund the contributions or pay \$100,000 to the U.S. Treasury. KVP contends that the money should be considered excess campaign funds and that the transfer was permissible.

APPARENT EXCESSIVE IN-KIND CONTRIBUTIONS — 2 U.S.C. § 9034.4(e), § 441a(a)(1)(A) and 11 CFR § 100.7(a)(1). Expenditures by KVP for campaign materials promoting the Dole/Kemp '96 ticket, and their distribution at the Republican National Convention, were questioned as possible in-kind contributions to Dole for President, Inc. (DFP). The Staff recommended the Commission determine that KVP had made and DFP received an in-kind contribution of \$77,237. The Commission rejected the Staff recommendation.

DISCLOSURE OF CONTRIBUTIONS FROM INDIVIDUALS— 2 U.S.C.

§434(b)(3)(A). The occupation and/or name of employer was not disclosed for a material number of the contributors. In response to recommendations in the Exit Conference Memorandum, KVP submitted an affidavit from an employee stating that the requirements for "Best Efforts" had been met. A copy of a form letter was included with the affidavit. However, no documentation was provided which supports that contributors for whom the requisite information was missing were sent a letter or that letters were sent within the prescribed time limits.

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22.07.025.3440



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

*REPORT OF THE AUDIT DIVISION
ON
KEMP FOR VICE PRESIDENT*

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Kemp for Vice President (KVP), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9007(a) of Title 26 of the United States Code 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) and 9039(b) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out its responsibilities under these chapters.

B. AUDIT COVERAGE

The audit covered the period from KVP's initial deposit on August 2, 1996 through December 31, 1996. KVP reported a beginning cash balance of \$0; total receipts for the period of \$500,215; total disbursements for the period of \$483,716; and an ending cash balance of \$16,499.¹

C. CAMPAIGN ORGANIZATION

KVP registered with the Federal Election Commission on August 7, 1996 as the 1996 Vice Presidential Convention Expense Committee. On August 13, 1996 an amended Statement of Organization was filed changing its name to Kemp for Vice President, the principal campaign committee of Jack Kemp, Republican candidate for the office of Vice President.

The Treasurer of KVP is Kirk L. Clinkenbeard, who has served in this position since the inception of KVP. KVP maintains its headquarters in Washington, D.C..

¹ All amounts in this report have been rounded to the nearest dollar.

To manage its financial activity, KVP used one bank account. From this account, KVP made approximately 90 disbursements. KVP received about 800 contributions from individuals, totaling approximately \$420,415, which represented about 84% of KVP's total receipts. In addition, KVP received 34 contributions from political action committees and other committees, such as party committees and candidate committees, totaling \$79,800 (or 16% of total receipts).

D. AUDIT SCOPE AND PROCEDURES

The audit of Kemp for Vice President (KVP) included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources; such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.C.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.B.);
5. proper disclosure of Committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to Committee bank records;
7. adequate recordkeeping of Committee transactions, and
8. other audit procedures that were deemed necessary in the situation (see Finding II.A).

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

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. CONTRIBUTIONS RECEIVED TO RETIRE PRIMARY DEBT

Section 110.1(b)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, a contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a). If the contribution is deposited, within sixty days from the date of the treasurer's receipt, the treasurer shall take the following action, as appropriate:

- Refund the contribution using a committee check or draft; or,
- Obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.1(b)(5).

If the candidate is not a candidate in the general election, all contributions made to the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.1(b)(5)².

Section 110.1(b)(3)(ii) of Title 11 of the Code of Federal Regulations states in part, that in order to determine whether there are net debts outstanding from a particular election, the treasurer of the candidate's authorized committee shall calculate net debts outstanding as of the date of the election. For purposes of this section, net debts outstanding means the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election and, if the candidate's authorized committee terminates or if the candidate will not be a candidate for the next election, estimated necessary costs associated with termination of political activity, such as the costs of complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rentals, staff salaries and office supplies; less, available cash on hand and amounts owed to the committee

Section 110.1(b)(3)(iii) of Title 11 of the Code of Federal Regulations states in relevant part, that the amount of net debts outstanding shall be adjusted as additional funds are received and expenditures are made.

² Although Secretary Kemp was a candidate for the office of Vice President in a general election, pursuant to § 9003.2(a)(2), it is impermissible to accept contributions other than for a legal and accounting compliance fund.

Section 113.2(c) of Title 11 of the Code of Federal Regulations states that excess campaign funds and funds donated may be transferred without limit to any national, State, or local committee of any political party.

The Audit staff prepared a net debt analysis for KVP based on disbursements of \$395,547³ and receipts of \$500,215. It was determined that sufficient funds to pay all obligations had been raised by September 30, 1996. After that time, primarily during the months of October and November KVP received additional contributions totaling \$104,668. Pursuant to §110.1(b)(3), KVP should have refunded these contributions or had them redesignated for another election. On October 31, 1996, KVP transferred \$100,000 to the National Republican Senatorial Committee (NRSC), describing it as a transfer of excess funds.

The Audit staff discussed this issue with a Committee representative on several occasions. During those meetings, the Audit staff was told that the treasurer had not kept track of KVP's debt position and that no workpapers were available for review.

At an end of fieldwork conference on April 21, 1998 KVP's legal counsel stated that although workpapers were not prepared, the treasurer had in fact kept a continuous running balance of KVP's debt position. He further stated that due to estimates that continued to come in, he was uncertain how much money KVP would need. Consequently, KVP continued to deposit contributions through November 18, 1996. KVP made no comments as to why contributions were not refunded or redesignated.

It is the Audit staff's opinion, based upon the financial records available, that KVP was or should have been aware of its cash position. However, it appears to have continued to raise funds without consideration of the limitations imposed by §110.1(b)(3). KVP's October 15 Quarterly Report, (7/29/96-9/30/96) signed by its treasurer, reflects a closing cash on hand of \$109,474 and debts and obligations owed by KVP of \$45,722. According to this report, KVP had a surplus of \$63,752. The Pre-General election report (10/1/96-10/16/96), showed an ending cash balance of \$142,896, with debts and obligations totaling \$28,983 and contributions received of \$56,430. The resulting surplus was \$113,913. Again, this report was signed by KVP's treasurer, which indicates his knowledge of KVP's financial position. From October 17 through November 18, 1996, the date of the last deposit into KVP's bank account, KVP accepted an additional \$71,255 of contributions.

The Audit staff also noted that a total of \$6,500 of contributions were deposited after KVP had transferred \$100,000 in unneeded funds to the NRSC (10/31/96).

³ The debt analysis includes receipts and disbursements reported by the Committee through March 31, 1998.

In the Exit Conference Memorandum (Memorandum), it was recommended that KVP provide evidence demonstrating that the contributions raised in excess of its net debt were permissively received and retained and that \$100,000 was properly transferred to the NRSC. Absent such a demonstration, it was recommended that KVP seek a refund in the amount of \$100,000 from the NRSC, and pay \$104,668 to the U.S. Treasury representing contributions received in excess of its net debts.

In response to the end of fieldwork conference as well as the Memorandum, the Committee Treasurer, Kirk L. Clinkenbeard, alleged that the initial budget for KVP was estimated to be in the \$250,000 range with it being adjusted up to \$350,000 after arrival at the convention and establishing a schedule for Secretary Kemp's activities in San Diego. Furthermore, Mr. Clinkenbeard stated:

After the Convention, and as firmer estimates of costs of expenses incurred on Secretary Kemp's behalf during the convention came in, (and with a number of costs such as travel still outstanding and of an unknown amount at that point), I estimated that we would need to raise in excess of \$500,000, to cover our likely final costs.

The record should show that this committee was established for the sole purpose of helping Jack Kemp acquire the Vice Presidential nomination and was put together in a timely but flexible manner. We had to operate on guesstimates of actual expenditures, and were legally responsible for all costs actually incurred on behalf of Jack Kemp at the Convention prior to his nomination, whether or not they were authorized and budgeted in advance. At no time in 1996 did I intentionally raise any contributions for the Kemp for Vice President Committee beyond my reasonable expectations of what our budget would require. My goal in post-Convention fundraising was to ensure that the Committee did not end with a debt, in the face of uncertain and ever-increasing estimates of costs incurred. Based on our estimates of over \$500,000 in expenses, we continued to accept contributions into October. It was only towards the end of that month as all of the final bills were accounted for, that it became clear that the Committee's bills would not be as high as we had feared, thereby leaving the Committee with some excess funds already on hand.

This sworn statement was available prior to issuance of the Memorandum and so provides no new information. As noted above, KVP's representative informed the staff that no formal tracking of net debt was undertaken, the disclosure reports filed by KVP after the convention reflect surplus funds and the continued acceptance of contributions, and additional contributions were accepted even after the transfer to the NRSC. It is accepted that some uncertainty existed with respect to the amounts that would eventually be required to satisfy all KVP obligations, however, the transactions

and cash flows described above do not reflect a careful monitoring of KVP's financial position. Regardless of the level of uncertainty that may have existed, given that the contributions transferred were received after the date of Secretary Kemp's nomination, KVP was required to refund, or to have redesignated, the additional contributions when it became apparent that they were unneeded. Only if excess campaign funds were on hand at the date of nomination could they have been transferred to the NRSC, and under no circumstances could KVP accept additional contributions after excess amounts were identified and transferred⁴.

A review of the most recent reports filed by KVP indicates that additional wind down costs have been incurred and paid. As a result, the amount of contributions received after no net debt existed is estimated to be equal to the transfer to NRSC.

Recommendation:

The Audit staff recommends that the Commission determine that KVP accepted contributions in excess of net primary debt amounting to \$100,000 and that KVP should request a refund from the NRSC. It is further recommended the Commission determine that KVP must either refund the last \$100,000 of contributions received, or pay \$100,000 to the U.S. Treasury.

B. In-Kind Contribution - Kemp for Vice President

Expenditures by KVP for campaign materials promoting the Dole/Kemp '96 ticket, and their distribution at the Republican National Convention, were questioned as possible in-kind contributions to Dole for President, Inc. (DFP)⁵.

The Staff recommended the Commission determine that KVP had made and DFP received an in-kind contribution of \$77,237.

The Commission rejected the Staff recommendation.

C. DISCLOSURE OF CONTRIBUTIONS FROM INDIVIDUALS

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

⁴ On October 30, the day before the transfer was made, KVP deposited contributions of \$21,325 and an additional \$1,500 on the day of the transfer to the NRSC. A total of \$6,500 of contributions were deposited into KVP's account after it had transferred the \$100,000 in excess funds to the NRSC.

⁵ For the full presentation and discussion of this issue see Agenda Document 99-51, Finding II.B. and the audio tape of the Commission's Open Session meeting on April 29, 1999.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" to be, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

Sections 104.7(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contributions(s) to the political committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer will only be deemed to have exercised best efforts to obtain, maintain and report the required information if: (1) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and (2) For each contribution received aggregating in excess of \$200 per calendar year which lacks required contributor information, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. Such effort shall consist of either a written request sent to the contributor or an oral request to the contributor documented in writing. The written or oral request must be made no later than thirty (30) days after receipt of the contribution. The written or oral request shall not include material on any other subject or any additional solicitation, except that it may include language solely thanking the contributor for the contribution.

The Audit staff reviewed contributions from individuals and determined that the occupation and/or the name of employer was not disclosed as required for 194, or 36% of the contributions requiring itemization and disclosed on KVP's report.

The Audit staff reviewed available documentation relating to KVP's attempts to obtain the required information. Solicitation devices for KVP's two major fundraising drives requested the information as required. KVP maintained that for contributions received which did not provide this information, small response cards requesting it a second time, were immediately sent out. The Audit staff was unable to find evidence of any letter of explanation being sent with these response cards, nor did KVP keep a complete record as to who had been sent requests. In addition, the Audit staff was unable to find evidence which would document that attempts to obtain the information were made within the allowable time. It should be noted that for the contributors who did respond to requests for information, KVP did report the information on the next regularly scheduled report.

When questioned about its attempts to obtain the information, KVP responded that the information was requested if missing, as soon as the contribution was received, but that no record was kept of who was sent second requests or the date they were sent. Additionally, a KVP representative stated that no letter of explanation was sent with the response cards.

Subsequent to and in response to this discussion, on May 1, 1998, KVP supplied a notarized letter from Cheryl Stevens, the Treasurer's Executive Assistant, who stated that:

It was the Committee's policy that we would send a thank you letter for every contribution received, and include with that letter a response device again requesting the full contributor identification (employer and occupation) if it did not come with the contribution. I personally prepared these thank you letters and response devices and to my knowledge every contributor who did not initially supply employer and occupation information received this follow up request. This second request was invariably sent within a few days of receipt of the contribution, and always within thirty days.

This letter contradicts KVP's earlier assertions that no letter was sent with second response devices. In addition, to date, KVP has been unable to provide necessary documentation to substantiate these assertions. As such, the Audit staff concluded that KVP had not demonstrated that it exercised its best efforts to obtain the missing information.

In the Memorandum, the Audit staff recommended that KVP file amended Schedules A disclosing as memo entries the occupation and name of employer for the contributions noted above, or provide evidence of timely contacts with contributors attempting to obtain the missing information.

In response to the Memorandum, KVP sent an additional affidavit from Cheryl Stevens in which Ms. Stevens again states that she prepared second request letters. She further states that these notices were sent out with thank you letters to each contributor and were sent within the thirty day time limit imposed by 11 CFR §104.7(a) and (b). A copy of a form letter retrieved from her computer was included with the affidavit. KVP also sent copies of response devices which it asserts were sent with contribution solicitations and requests for missing information.

The materials supplied in response to the Memorandum are adequate to satisfy the requirements of § 104.7(a) and (b) if used as described in the affidavits provided. However, no documentary evidence such as copies of dated letters sent to contributors, or a log listing the contributors who were sent second requests and the dates those requests were sent is available. Absent evidence of this type, the Audit staff concludes that KVP did not exercise its best efforts to obtain the required information.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 24, 1999

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman *KBC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Susan L. Kay *SK*
Attorney

SUBJECT: Proposed Audit Report on Kemp for Vice President (LRA #511)

The proposed Audit Report on Kemp for Vice President ("KVP") was submitted to the Office of General Counsel on January 26, 1999. The following memorandum summarizes our comments on the proposed report.¹ We concur with the findings in the proposed Audit Report which are not discussed in the following memorandum. If you have any questions, please contact Susan Kay, the attorney assigned to this audit.

The proposed Audit Report includes a finding that KVP made in-kind contributions to Dole for President Inc. ("DFP") totaling \$77,237. However, in

¹ We recommend that the Commission consider this document in open session since the proposed Audit Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

considering the Audit Report on DFP, the Commission decided that these were not in-kind contributions by KVP to DFP. Therefore, the Office of General Counsel recommends that the Audit staff amend this Report accordingly.

In addition, the proposed Audit Report includes a finding that KVP received contributions after the Republican National Convention in excess of its net debt, and did not appropriately dispose of those contributions pursuant to 11 C.F.R. § 110.1(b)(3)(i). If contributions are made after an election that exceed net debt, they must be returned or refunded to the contributor, or redesignated by the contributor for another election. 11 C.F.R. § 110.1(b)(3)(i).² According to the Audit staff, KVP had sufficient funds to pay all obligations by September 30, 1996, but continued to receive additional contributions in the amount of \$104,668. KVP did not return, refund or redesignate these contributions received in excess of net debt. Instead, on October 31, 1996, KVP transferred \$100,000 to the National Republican Senatorial Committee ("NRSC").

According to KVP, "[its] goal in post-Convention fundraising was to ensure that the Committee did not end with a debt, in the face of uncertain and ever-increasing estimates of costs incurred. Based on [the] estimates of over 500,000 in expenses, [KVP] continued to accept contributions into October." See Audit Report at 5. Once KVP received funds sufficient to fulfill its debt obligation, the remaining funds were described by KVP as excess campaign funds which could be transferred pursuant to 11 C.F.R. §§ 113.1(e) and 113.2(c).

This Office believes that KVP should not have continued to accept contributions after the election once it no longer had outstanding debt. KVP should have computed its actual debt at the time of the Convention. Even if some uncertainty existed, KVP was obligated to report its debts and obligations, and the reports filed by KVP indicate that it should have known its debt position. See 11 C.F.R. § 104.3(d)³. In fact, KVP filed a Quarterly Report on October 15 that indicates it had met its obligations by September 30, 1996.⁴

Further, KVP mischaracterized the funds remaining after its net debt was paid as excessive campaign funds that could be transferred to another committee. These funds were not excessive campaign funds. Excessive campaign funds are amounts that a committee receives as contributions that are in excess of any amount needed to defray campaign expenditures. 11 C.F.R. § 113.1(e). Excessive campaign funds can only result from contributions accepted prior to the election, because contributions made after the

² The Vice Presidential primary election ends after a candidate is nominated at the National Convention. See generally AO 1979-43. The Republican vice-presidential candidate was nominated on August 14, 1996.

³ For purposes of reporting, a committee can estimate its debt. However, it must correct the estimated amount once the actual amount is known. 11 C.F.R. § 104.11(b).

⁴ KVP was required to continuously report its debts until they were extinguished. 11 C.F.R. § 104.11(a)

election that were designated for a particular election can only be accepted to the extent that the committee has net debts outstanding. See 11 C.F.R. § 110.1(b)(2)(i) and (ii). See also 11 C.F.R. § 110.1(b)(3)(i). The funds at issue were designated for a particular election, but were contributed after the election and therefore they may only be used to defray the net debts outstanding from that election. 11 C.F.R. § 110.1(b)(3)(i). Any remaining funds should have been returned, refunded or redesignated. *Id.* The remaining funds could not be transferred to another committee. Compare 11 C.F.R. § 110.1(b)(2)(i) and (ii) with 11 C.F.R. § 113.2(c).

The Exit Conference Memorandum recommended that KVP seek a refund from the NRSC of \$100,000 and pay the United States Treasury \$104,668 for the contributions that KVP received in excess of its net debts outstanding. However, the proposed Audit Report does not contain a similar recommendation and there is no indication that KVP made a payment to the United States Treasury or refunded the original contributors. The Office of General Counsel recommends that the Audit Division include a recommendation in the proposed Report for KVP to seek a refund from the NRSC and then refund the original contributors pursuant to 11 C.F.R. § 103.3(b)(3)⁵ or for KVP to make a payment to the United States Treasury under 11 C.F.R. § 9007.1(f)(3).⁶

Although section 9007.1(f)(3) applies to publicly-financed general election committees, KVP could be held to the same requirement.⁷ Similar to the situation of a publicly-financed committee, requiring KVP to disgorge the amount at issue to the United States Treasury will cure a possible violation in the context of the audit, and it will allow KVP to make one payment to the Treasury, as opposed to refunding multiple

⁵ KVP may refund the original contributors. However, any refunds by KVP at this point would be untimely. See 11 C.F.R. § 110.1(b)(3)(i).

⁶ Funds received in excess of net debt are considered excessive contributions for the purpose of evaluating whether these funds were properly disposed of pursuant to 11 C.F.R. § 103.3(b)(3).

⁷ As the Commission noted in the Explanation and Justification for 11 C.F.R. § 9007.1(f)(3), "courts have upheld the use of disgorgement in cases involving securities violations 'as a method of forcing a defendant to give up the amount by which he was unjustly enriched,' *SEC v. Tome*, 833 F.2d 1086, 1096 (2nd Cir. 1987), citing *SEC v. Commonwealth Chemical Securities, Inc.* 574 F.2d 90, 102 (2nd Cir. 1978)." Explanation and Justification for 11 C.F.R. § 9007.1(f)(3) 60 Fed. Reg. 31863 (June 16, 1995).

contributions.⁸ Explanation and Justification for 11 C.F.R. § 9007.1(f)(3) 60 Fed. Reg. 31863 (June 16, 1995). Moreover, other nonpublicly-financed committees have voluntarily disgorged funds as an alternative to refunding multiple excessive or prohibited contributions. See Audit on Republican Campaign Committee of New Mexico (July 30, 1996) (Committee disgorged anonymous excessive cash contributions in the amount of \$2,025).

⁸ Since a portion of the contributions at issue, \$100,000, is no longer in the possession of KVP; KVP would be required to seek a refund from the NRSC before disgorging all of the contributions received in excess of net debt to the United States Treasury. In the audit of Buchanan for President, the Commission did not seek a disgorgement of excessive contributions because Buchanan for President no longer had possession of the contributions. Buchanan for President had untimely refunded the original contributors. See Audit Report on Buchanan for President, Inc. (January 14, 1999). However, this matter is distinguishable from the Commission's determination in the Audit Report on Buchanan for President, Inc. In this matter, KVP did not refund the contributions at issue to the original contributors. Rather, KVP transferred the contributions to another entity, the NRSC. Therefore, KVP can seek a refund from the NRSC and make a payment to the United States Treasury in the amount of \$104,668 for contributions received in excess of its net debt.

22-07-025-3452



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1999

Mr. Kirk Clinkenbeard, Treasurer
Kemp for Vice President
In C/O Gilbert & Wolfand
2201 Wisconsin Ave., NW, #320
Washington, DC 20007

Dear Mr. Clinkenbeard

Attached, please find the Report of the Audit Division on Kemp for Vice President. The Commission approved the report on May 13, 1999.

The Commission approved Audit Report will be placed on the public record on June 30, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220 or toll free at (800) 424-9530. Any questions you have related to matters covered during the audit or in the report should be directed to Rhonda Simmons or Joe Stoltz of the Audit Division at (202) 694-1200 or the above toll free number.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1999

The Honorable Jack Kemp
Kemp for Vice President
In C/O Gilbert & Wolfand
2201 Wisconsin Ave., NW, #320
Washington, DC 20007

Dear Secretary Kemp:

Attached, please find the Report of the Audit Division on Kemp for Vice President. The Commission approved the report on May 13, 1999.

The Commission approved Audit Report will be placed on the public record on June 25, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220 or toll free at (800) 424-9530. Any questions you have related to matters covered during the audit or in the report should be directed to Rhonda Simmons or Joe Stoltz of the Audit Division at (202) 694-1200 or the above toll free number.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

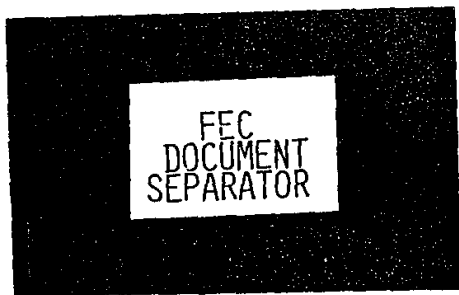
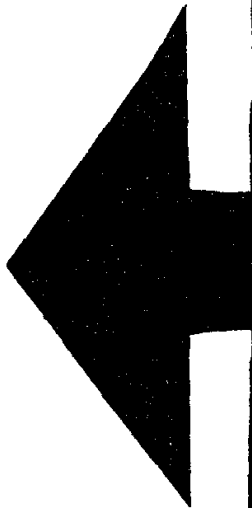
CHRONOLOGY

KEMP FOR VICE PRESIDENT

Audit Fieldwork	10/28/97 -11/21/97
Interim Audit Report to the Committee	8/24/98
Response Received to the Interim Audit Report	10/24/98
Final Audit Report Approved	5/13/99

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