



FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20463

THIS IS THE BEGINNING OF MUR # 3107

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DEMOCRATIC  
CONGRESSIONAL  
CAMPAIGN COMMITTEE

MUR 3107

Beryl Anthony, Jr., AR  
Chairman

August 8, 1990

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Commissioners:

The Democratic Congressional Campaign Committee ("DCCC") today files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. §§ 431 et seq., and the Federal Election Commission ("FEC") regulations, 11 C.F.R. §§ 100.1 et seq., by the following candidates and their principal campaign committees (referred to collectively hereafter as "Respondents"): Ted Blanton, Kenneth Bell, Rick Hawks, and Mike Pence.

Respondents have violated the FECA by using campaign funds for personal purposes in violation of 2 U.S.C. § 439a.

Factual Context

Each of the four candidates identified above have openly used contributions made to their campaign committees for personal living expenses. The attached newspaper accounts detail the illegal use of campaign funds for such personal expenses, which are summarized below.

- Ted Blanton: Between February and June, Blanton received close to \$12,000 from his campaign to pay his personal living expenses. In addition, he received several hundred dollars each month to cover the cost of his meals and transportation. One of the newspaper reports points out that this is over one dollar for every ten dollars raised by Blanton's campaign. The monies are used to pay Blanton's home mortgage, utility bills, and babysitting expenses. Yet according to his Ethics in Government Act report, Mr. Blanton earned over \$42,000 last year in his law practice.

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- Kenneth Bell: Mr. Bell has received from his campaign over \$2,000 in house payments and close to \$600 in payments on a personal car.
- Rick Hawks: Hawks' campaign is out over \$4,500 in living expenses to cover the candidate's mortgage, health insurance, and utility bills. In addition, Hawks has received two \$1,000 payments of what one newspaper calls "pocket money." The FEC reports do not disclose what this "pocket money" was spent for. Mr. Hawks' Ethics in Government Act report discloses that his 1989 salary came close to \$50,000 and, for 1990 so far, he has received close to \$15,000. He also receives rental payments on a house owned by him.
- Mike Pence: Mike Pence has been charging his campaign almost \$1,000 per month to cover his home mortgage, and \$222 per month to cover his wife's car payment. In addition, his campaign committee has covered the cost of his groceries, parking tickets, golf greens fees, and has paid a VISA bill of close to \$1,500. Yet Pence's Ethics in Government Act report discloses that he earned over \$75,000 last year and holds over \$50,000 worth of stock. While Pence claims he took a 30 percent cut in his salary to run for office, he still earned \$27,500 last year from his law practice, while his wife earned \$35,753 as a school teacher. Their investments also brought them \$12,500 in interest and dividend payments.

#### The Law

The Federal Election Campaign Act provides at 2 U.S.C. § 439a that a candidate may use funds in excess of the amounts needed for his campaign for any lawful purpose. This provision of the statute, however, goes on to prohibit the use of campaign funds for any personal use if an individual was not a Member of Congress on January 8, 1980. None of the four candidates in question were in Congress on that date and, therefore, they are prohibited by law from using campaign funds for personal expenses.

The Federal Election Commission, charged with interpreting this section of the statute, has traditionally allowed campaigns a great deal of discretion in determining what are appropriate campaign expenditures. See, e.g., Advisory Opinions 1978-80, 1983-1 and 1985-42, 1 Fed. Election Camp. Fin. Guide [CCH] ¶¶ 5369, 5706 and 5841. Nonetheless, despite this wide latitude, the Commission has found in certain

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circumstances that the line between legitimate campaign expenses and personal use has been crossed. Given these Commission interpretations, the candidates in question here have clearly crossed over this line and have violated the campaign laws.

In Advisory Opinion 1980-138, 1 Fed. Election Camp. Fin. Guide [CCH] ¶¶ 5581, for example, the Commission found that a newly elected Senator could use campaign funds to pay for certain expenses incidental to his transition to federal office. These included, for example, the expense of moving the Senator-elect and his family to Washington, D.C. and other travel between the state and Washington, D.C.. The Commission went on to note, however, that

with respect to the payment of living expenses of the Senator-elect and his family (during the period between November 5, 1980 and the date he is sworn in as a U.S. Senator), those expenses would exist whether [the Senator] was elected to federal office or not, and accordingly are not 'incidental' to his election to federal office. Payment from excess campaign funds for these living expenses would therefore be a 'personal use' of such funds prohibited by the Act, since the Senator-elect was not a Member of Congress on January 8, 1980.

See also Advisory Opinion 1981-2, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5591. ("Expenses which would exist regardless of an individual's election to federal office are not 'incidental' and may not be paid from campaign funds.").

In Advisory Opinion 1987-1, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5582, a Congressional candidate made a claim against his principal campaign committee for "lost wages." The amount claimed represented wages he would have earned at his regular job had he not been a candidate. The Commission found that any payment by the campaign committee of these "lost wages" would be a conversion of campaign funds to personal use. The Commission noted that 2 U.S.C. § 439a "prohibits the use of excess campaign funds by a candidate or former candidate to confer a direct or indirect financial benefit on such individual, except in those situations where the financial benefit is in consideration of valuable services performed for the campaign." The Commission found that the payment of lost wages would clearly result in a direct financial benefit. Because the committee had not previously entered into any written agreement with him to provide for compensation in

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exchange for services to the campaign, the payment would be a prohibited personal use of excess campaign funds.

In Advisory Opinion 1987-2, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5583, a Congressional campaign asked whether it would be permissible to purchase a car for use by the candidate in his campaign (and for use in connection with his official duties as a Member of the House of Representatives). The Commission found that the purchase and use of a car by the campaign for campaign purposes would be a permissible use of campaign funds. The Commission went on to note, however, that "if the events in question and the related travel expenses do not qualify under 2 U.S.C. § 439a and Commission regulations, and are not otherwise expenditures for campaign-related travel, they would presumably be expenses of a personal nature." While the candidate in question in this Advisory Opinion was a Member of Congress on January 8, 1980, and therefore exempt from the prohibition on personal use, it is clear that the Commission intended that had this not been the case, the use of the car for expenses of a personal nature would be prohibited under 2 U.S.C. § 439a. See also, A.O. 1985-42, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5841 (payment of rent to candidate for use of apartment for noncampaign purposes is prohibited).

Discussion

The newspaper reports detailing the personal use of campaign funds by the four candidates in question show that these candidates are not trying to hide the fact that the funds are being used for purely personal purposes. They make no pretense of arguing that the expenses are related in any way to their campaign activities or that they would not be incurred in the absence of a campaign. Clearly a home mortgage and a wife's car payment are expenses that exist regardless of whether an individual is seeking federal office. The candidates in all four cases have allowed as how they would not be able to run for office if they continued to have to work for a living wage while they are campaigning. In effect, the campaign is paying these candidates for their "lost wages." Yet in no case is there any indication that the candidates have a pre-existing obligation that the campaign has assumed nor is there any indication that there is a contract between any of these candidates for their "valuable services" in exchange for these payments.

This abuse of the personal use restriction must be stopped. While the Commission is not (and should not be) in a position to evaluate every expenditure made by a campaign as to its merit to the campaign, here no such judgment is necessary.

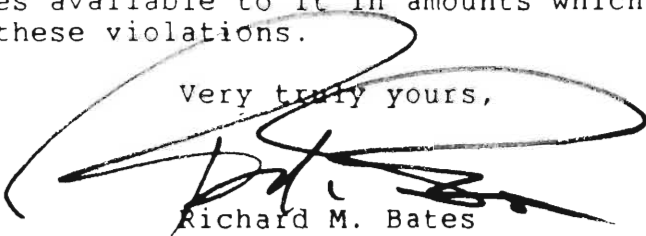
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These expenses have no connection with the conduct of the candidate's campaign. The payments are simply the use of contributors' funds for the personal gain of the individual candidates.

This use of campaign funds works a fraud on the campaign contributors. Whereas contributions were made to these campaigns for the purpose of supporting legitimate campaign activities such as advertising or campaign staff salaries, contributors to these four campaigns have found their funds are used to pay the purely personal expenses of the individuals involved. As the newspaper clippings point out, many of the contributors involved were unaware of the use to which their campaign funds would be put, and have expressed "disappointment" at the misleading campaign solicitations which prompted their contributions.

The Commission must not allow this mockery of the campaign laws to continue. The Commission should take immediate steps to stop the use of campaign funds for this illegal purpose. The Commission should take all steps necessary, including an audit of the books and records of each of the campaigns, to determine the full extent of the prohibited use of campaign funds and to ensure the full restitution of such funds by the candidates in question. Finally, the Commission must impose any and all penalties available to it in amounts which reflect the seriousness of these violations.

Very truly yours,

  
Richard M. Bates  
Executive Director

*District of Columbia*

SUBSCRIBED AND SWORN TO BEFORE ME  
this 8<sup>th</sup> day of August, 1990.

  
Notary Public

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Indianapolis News A-1

# Spending of campaign donations questioned

The Associated Press

FRANKLIN, Ind. — Congressional candidate Mike Pence is using campaign contributions to pay for his own living expenses, a practice that while legal is considered unusual, according to a newspaper report distributed to the media Wednesday by the campaign of Pence's opponent.



Mike Pence

Federal Election Commission reports studied by the Daily Journal of Franklin show that Pence has used contributions to pay for a \$992 a month mortgage on his far-Southside Indianapolis home, nearly \$1,500 in credit card bills and a series of \$222.18 payments on his wife's car.

FEC reports also show that Pence, a candidate for the 2nd District seat, used campaign contributions to pay off parking tickets, groceries and entry fees for golf outings.

The Daily Journal report was sent to 2nd District media outlets by Billy Linville, campaign manager for

# Pence: Says 'I need to make a living'

Continued from A-1

Incumbent Rep. Phil Sharp, D-Ind., Linville recently admitted helping Rush County Prosecutor Ron Wilson, a Democrat, by giving him media favors, machine numbers so he could purchase an alleged campaign financing violation by a Pence supporter in Rush County.

Linville, despite criticism that he's trying to smear Pence, defended his publicity campaign. In fact, he said, this practice will continue.

"Isn't this my job -- to inform the press what's going on?" he said. "Anything I think is relevant, I'll inform the press."

The Daily Journal's story Wednesday quotes Sharp's government watchdog group, the Common Cause of Indiana, Public Official-Congress Watch and the Center for Responsive Politics.

They say that Pence's campaign spending practices are questionable. But Pence defended himself, saying: "Pence's wife earned \$27,500 last year from his law

practice in Greenwood, said he had to take a 30 percent cut to run for office. He ran unsuccessfully against Sharp in 1988.

"I'm not embarrassed that I need to make a living," Pence told the Daily Journal.

Pence, who has been critical of a federal law that allows long-terms incumbents to keep accumulated campaign contributions when they retire, said linking his statements on campaign reform and his spending habits is wrong.

"That's an absolutely ridiculous analogy... and frankly a bit insulting," Pence said.

That a candidate feels he must spend contributions to survive may point out a flaw in the election process, said Ellen Miller of the Center for Responsive Politics. Challenging incumbents faces an uphill battle against well-financed incumbents.

However, FEC reports show that Pence had raised \$223,000 as of April 16, with \$27,500 in support due Monday, while Sharp as of June 30 had raised \$165,039.63.

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# campaign funds for house, car

By KAREN TERHUNE  
Evening Press reporter

Contributions to Mike Pence's congressional campaign are covering not only his election expenses, but also his house and car payments.

According to a report filed this week with the Federal Election Commission, Pence's campaign expenditures include \$992 for a monthly mortgage payment



Pence

on his Greenwood home and \$222 for an auto loan on his wife's car. An earlier report shows VISA payments for February and March totaling \$1,479.

The Pence campaign said the expenditures are not only legal, but necessary "to meet the enormous cost of a congressional campaign."

Sharon Snyder, a spokesman for the Federal Election Commission, said today the commission had given wide discretion under federal statute as to how campaign funds could be spent. That was the opinion issued in 1980 when a candidate asked to use contributions to defray living expenses, she said.

"Only the commissioners could make a decision on the actual situation, should a complaint be filed," Snyder said.

Continued on page 8

## More about Pence

Continued from page 1

Pence's opponent, incumbent Phil Sharp, D-Muncie, has used no campaign funds for personal expenses, according to his finance report.

"Mike Pence said it best in 1980," said Bob McCarron, Sharp's press secretary. "He said it was unethical and wrong for incumbents elected before 1980 to convert to personal use their campaign war chests for personal use after retirement. How is converting campaign funds for personal use before election different?"

A government watchdog group also was critical of Pence's spending practices.

"Most people who contribute to a campaign do so with the belief that they are paying for advertising, mailings, etc., not for the candidate's personal expenses," Russell Sipes, director of the Indiana chapter of Common Cause told The Daily Journal of Franklin.

The newspaper reported Wednesday that Pence's campaign expenses included \$115 for golf tournament entries and \$37.50 for traffic and parking violations.

Wednesday, the Republican candidate released a statement concerning the finance report.

"I am not a rich man, and it will be a sad day when only incumbents and rich people run for public office," Pence stated. "I am committed to integrity in government, but as a middle-class American, it is impossible for me to meet my first obligation, which is to provide for my family and run for the United States Congress in the 2nd Congressional District."

Pence said he had asked his campaign committee, "in strict compliance with all federal election laws," to provide him living expenses totaling about \$2,000 a month. Instead of accepting it as a salary, Pence has instructed his campaign manager to cover his mortgage and car payments and other living expenses.

The Daily Journal reported that Pence and his wife Karen earned more than \$75,000 last year. They have no children.

Pence's salary at the law firm of Bailey and Pence was \$27,500 and his wife earned \$35,753 as a teacher with Franklin Township School Corp. In addition, they received about \$12,500 in dividends, interest, rent and capital gains.

Finance reports show Pence col-

lected about \$215,000 from contributors through June 30 and spent about \$226,000. He had a cash balance of \$72,500. He raised \$122,000 in 1989.

Pence has repeatedly criticized Sharp for accepting contributions from political action committees. In May, he asked the congressman to join him in a "no-PAC pledge."

Sharp has collected \$132,000 from PACs this year. The largest contribution was \$6,000 from the National Association of Retired Federal Employees (NARFE-PAC).

Pence's largest contribution was \$5,000 from the National Republican Congressional Committee.

Pence clearly has the advantage in donations from individuals. He has collected \$209,000 from about 500 people, including 55 contributions of \$1,000.

By contrast, Sharp has received only six \$1,000 contributions. He has received \$32,000 from about 300 individuals.

Sharp's campaign collected \$165,000 since Jan. 1 and spent about \$74,000. He had \$316,000 in cash on hand. He began the year with \$240,000.

In the 6th District, Rep. Dan Burton, R-Indianapolis, has collected \$182,000 in the first six months of this year and spent \$54,000. His opponent, James Padely of Indianapolis, has raised \$5,422 and spent \$5,699.



Hawks (R-ch)

# Campaign dollars keep Hawks' household afloat

The Fort Wayne Journal-Gazette

Saturday, July 21, 1980 7A

By SYLVIA A. SMITH  
Washington Editor

WASHINGTON — Rick Hawks, who gave up his salary when he resigned as pastor of Blackhawk Baptist Church to run for Congress, is relying on his campaign to pay his living expenses.

His contribution and expenses report for April 19 through June 30 show that Hawks received more than \$4,500 in living expenses — including money for mortgage payments and utility bills — from the campaign.

A spokesman for the Federal Election Commission said the issue has come up in other campaigns, and the commission has ruled that candidates' personal expenses may be underwritten by a campaign as long as the expenses are reported.

Hawks, a Republican, is running



Hawks

against Democratic incumbent Jim Long, who won the 6th District congressional seat in a special election in 1980. It is the position Dan Coats vacated when he was appointed senator to replace Dan Quayle when Quayle became vice president.

Paul Werner, Long's campaign manager, called the use of campaign money for the candidate's personal expenses "distinguishable if not unethical."

"It is perfectly legal, perfectly ethical and a legitimate way for a

candidate who's not coming from a background of enormous financial means to be able to run as a candidate."

**It is perfectly legal, perfectly ethical and a legitimate way for a candidate who's not coming from a background of enormous financial means to be able to run as a candidate.**

”

— Rick Hawks  
6th District congressional candidate

candidate who's not coming from a background of enormous financial means to be able to run as a candidate," Hawks said.

He said the Long campaign is criticizing the expenditures as a way to deflect people's interest to his report "rather than how deeply she's involved in PAC (political

action committee) contributions."

According to the financial disclosure statement that Hawks filed earlier this year, he received \$49,668 from Blackhawk Baptist Church in 1980 in salary, housing allowance, bonus and honoraria. Before resigning March 25, he received \$14,000 from the church.

Rent from a house on Briarwood Court, about \$800 a year, is Hawks' only other source of income according to his spokesman, Paul Branks.

The report says the campaign paid

■ Two thousand dollars (in two \$1,000 increments) for Hawks' increased living expenses.

■ Two payments to Standard Federal of \$577 each for his mortgage.

■ Monthly payments of \$295 to Indiana Michigan Power Co., NIPSCO and City Utilities.

■ A health insurance reimbursement of \$300 to Blackhawk Baptist Church.

Werner said, "I doubt seriously whether his campaign contributors had any idea that they were helping Rick Hawks buy his house, as

opposed to get him into the House of Representatives."

Hawks disagreed: "Large numbers of our contributors are people who are as concerned about Rick Hawks and family as they are about Rick Hawks in Congress," he said.

Hawks' previous campaign report showed he received \$1,000 for living expenses in April. He said he probably will continue to tap the campaign for living expenses during the race.

"We stand the most fair, honest, ethical way is to put right in the FEC reports where we're living is coming from so people would not think we're trying to do anything unethical," he said.

Hawks has raised almost \$250,000 since entering the race, which is \$57,000 more than Long.

# Republicans defend personal use of campaign funds for expenses

By TYRONE MEIGHAN  
STAR STAFF WRITER

The national and state Republican Party on Friday defended two Indiana congressional nominees who are using campaign contributions to pay their personal expenses.

Federal Election Commission reports show that Republican nominees Mike Pence and Rick Hawks used campaign contributions to pay for personal expenses, such as house, car and credit card payments. The spending practice is legal, according to the commission.



Pence



Hawks

Pence is challenging incumbent Democratic U.S. Rep. Phil Sharp's 2nd Congressional District seat, and Hawks is making

a bid for Democratic U.S. Rep. Jill Long's 4th District seat.

Gary Koops, spokesman for the National Republican Congressional Committee, said Pence and Hawks must use contributions for personal use because they are taking time off from their jobs to campaign.

"It's not that uncommon because to win a seat in Congress is a full-time task," he said. "I think you see it a lot with challenger candidates."

Pence is a lawyer, and Hawks gave up his job as senior pastor

See C.A.MPAIGN Page 3

## Campaign

Continued from Page 1

of Blackhawk Baptist Church in Fort Wayne to campaign.

But some say spending campaign contributions on personal expenses is misleading to the contributors.

It seems that the Indiana Republican Party may be trying to fund full-time politicians with contributions from hard-working voters from those districts, said Hollis Friedman, spokeswoman for the Democratic Congressional Campaign Committee. "It certainly is extremely unusual."

It's a fine line between what is legal and what is proper or improper.

State Republican Chairman Keith Luse said candidates use campaign contributions for their personal use because of the escalating costs of winning a seat in Congress.

"I'm not certain that it's unusual at all," he said. "In situations such as Pence's and Hawks', where they are campaigning full time and don't have the option of sources of previous income, it seems to me they are both being very up-front."

Although it is legal, the election commission could investigate the candidates' spending practices if a complaint is filed.

But in cases in 1980 and 1985, the commission ruled that spending campaign contributions on personal expenses is legal.

The important thing is to make full public disclosure, said commission spokesman Fred Eiland. "There's nothing in the law that tells the candidates how to spend their money."

Election commission reports through April 18 show the Pence campaign using contributions to pay a \$692 monthly mortgage payment to Fleet Mortgage Co. for his home on Buffalo Drive near German Park in Indianapolis. The reports also show Visa payments of \$791.36 in February and \$666 in March listed as personal expenses.

Hawks' April 19 through June 30 report shows monthly payments of \$295.73 to Indiana Michigan Power, City Utilities and Northern Indiana Public Service Co. for electricity, water and natural gas service at his home in Fort Wayne. In addition, Hawks' campaign ledger paid \$587 to Standard Federal Sav.

Eiland said he is unsure how many candidates use campaign contributions for personal expenses.

"There's no way of really knowing because you're talking about 1,500 to 2,000 candidates, and we don't review every one of them."

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## Blanton spending of funds criticized

By Galtner Simmons  
THE SALISBURY POST

Ted Blanton, the Republican congressional candidate for the 8th District, has spent \$11,600 in campaign donations for his personal expenses this year.

It is legal to use campaign funds for such a purpose, although few candidates use Blanton

Blanton, a Salisbury attorney who narrowly lost to Bill Hooper in



the 1988 congressional race, confirmed the expenses Monday, which showed up in his campaign finance reports.

"I have a wife and four children who continue to need a roof over their heads and food on the table during this campaign," he said in explaining the use of the monies. "My supporters know and understand that in order to campaign in 13 counties I must defray my living expenses."

Blanton earned \$42,000 last year from his legal practice, according to a financial disclosure statement filed in May. He and his wife, Mary, who works part-time in the firm, have made only \$1,000 this year because of the early campaigning, Blanton said.

Using campaign funds in that way was discussed by Blanton late last year with a group of political advisers including former Gov. Jim Holtzclouser, Blanton said. The advisers supported the use of such funds if it was necessary to allow Blanton to campaign early, he said.

"Even though the FEC (Federal Election Commission) says it's legal," said Billy Max Paul, Hooper's campaign manager, "in my opinion if he's going to use campaign contributions for his own use he should at least notify his political contributors that he's paying his home mortgage and buying drinks with their donations."

Paul said he knows of only three

or four congressional candidates who are using campaign funds in such a way. All are Republican, challenging Democratic incumbents, including U.S. Rep. Stephen Neal, D-M.C.

Paul also called on Blanton to make an itemized list showing how he spent the \$11,600.

Blanton "seems to be turning into a perennial candidate," Paul said. "If he runs for another 15 years, he can pay for his house."

There's nothing wrong with using campaign funds to cover personal expenses as long as it's reported, said George Little, a Moore County resident serving as the 8th District Republican Party

→ See Blanton, Page 8A

page 1

From Page 1A

chairman "It takes a lot of time and expense to get out and campaign," he said "If any working person wants to campaign, they have no choice."

Little was one of the political advisers Blanton consulted with last fall, along with Holschouer, Rowan County resident Paul Carter, Roger Franco, with the National Republican Campaign Committee, and Stewart Payne, finance chairman for the 8th District GOP.

Michael Pence, a Republican congressional candidate in Indiana, had used campaign donations to defray personal expenses in 1988, and he discussed the idea with Blanton at a dinner in Washington, D.C., early this year, Blanton said.

Blanton spent the \$11,000 between February and June, according to a financial report from the FEC.

Using the campaign funds in such a way enabled Pence to begin campaigning early, and Blanton said he decided he needed to do the same thing in his 1988 campaign. Blanton said, he had worked full-

time until Labor Day, then campaigned full-time until Election Day.

"The last campaign taught me the lesson about campaigning that Earl Ruth told me," Blanton said. Ruth, who died in 1988, was a Salisbury resident who served in the U.S. House from 1968-74. "In a rural, spread-out district, you have to get out in the district and talk to people and be seen."

"It was clear to me at the end of the last campaign that I didn't do enough of that... I know I had to campaign early, and if I did, I would need help with my living expenses."

"Most everyone who knows me knows that I'm not a wealthy person and that I'm not from a wealthy family. My supporters want me to win and be able to campaign."

Federal regulations allow such a use of campaign funds, said Fred Eiland, an FEC spokesman. "The law doesn't specify how a candidate can spend their money or not spend their money," he said. "They're given wide latitude, as long as they provide full disclosure."

Page 2

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Pg A4 Columbus 7/22/90 (Sunday)

# Republicans defend use of contributions

## Pence, Hawks are within the law, says GOP

Associated Press

INDIANAPOLIS — Two Indiana congressional candidates are within the law by using campaign contributions for personal expenses, say representatives of the national and Indiana Republican parties.

Federal Election Commission reports show Mike Pence and Rick Hawks used campaign contributions to pay for house, car and credit card payments. The spending practice is legal, the commission said Friday.

Pence is challenging Rep. Phil Sharp, D-Ind., in the 2nd District, and Hawks is making a bid for Rep. Jill Long's 4th District seat.

Gary Koops, spokesman for the National Republican Congressional Committee, said Friday that Pence and Hawks are using campaign contributions for personal use because they are losing in-

come while campaigning.

"It's not that uncommon because to win a seat in Congress is a full-time task," he said. "I think you see it a lot with challenger candidates."

Pence is a lawyer, and Hawks gave up his job as senior pastor of Blackhawk Baptist Church in Fort Wayne to seek election.

Escalating costs of winning a seat in Congress have caused other candidates to use campaign contributions for their personal use, State Republican Chairman Keith Luse said.

"I'm not certain that it's unusual at all," Luse said. "In situations such as Pence's and Hawks', where they are campaigning full time and don't have the option of sources of previous income, it seems to me they are both being very up-front."

But, others say spending cam-

aign contributions on personal expenses is misleading.

"It seems that the Indiana Republican Party may be trying to fund full-time politicians with contributions from hard-working voters from those districts," said Willie Friedman, spokesman for the Democratic Congressional Campaign Committee.

Election commission reports through April 18 show the Pence campaign using contributions to pay a \$992 monthly mortgage payment for his home in Indianapolis. The reports also show Visa payments of \$1,479.38 listed as personal expenses in February and March.

Hawks' April 19 through June 30 report shows monthly payments of nearly \$300 for electricity, water and natural gas service at his home in Fort Wayne. In addition, Hawks' campaign twice paid \$597 for his home mortgage.

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# DAILY JOURNAL

NEWSSTAND PRICE — 35 CENTS

JOHNSON COUNTY, INDIANA

SATURDAY, JULY 31, 1998

## Pence backers unaware of spending

By DAVID HACKETT  
AND JEFF MADSEN

DAILY JOURNAL STAFF WRITERS

### Financial backers of Republican

say they were unaware until this week that he is using campaign contributions to pay personal bills.

And although the practice is legal, some contributors say they are disappointed and concerned about how it will affect Pence's bid to unseat Rep. Phil Sharp, a Democrat from Muncie, in the contest for Indiana's 2nd District seat in the U.S. House of Representatives.

Other supporters, however, said

that Pence's use of campaign funds is appropriate and that they will continue donating to his campaign.

The Daily Journal reported Wednesday that Pence, a Greenwood attorney, has used campaign funds

on his Indianapolis home, as well as for credit card bills, parking tickets, monthly payments on his wife's car, and other expenses.

Two campaign watchdog groups based in Washington, D.C., called the practice "unusual." Only one other congressional candidate in Indiana's 18 districts has made similar use of campaign funds, according to the latest round of election commission reports.

Pence, whose campaign has raised \$221,578.98 this year, defended the action, saying he took a 30-percent pay cut from his law practice to run for office and needs the money to live on.

"It's the morally right thing to do to provide for his family," Pence said.

Without the money, Pence said, he wouldn't be running for office. The funds allow him to meet his financial obligations while campaigning full time. And working at it full time is the only realistic way to go about defeating an entrenched incumbent, he said.

Pence said he's always been honest to his supporters.

In a statement issued after the campaign story was first reported this week, Pence said: "In the interest of full and complete disclosure, he wanted to make sure his 'supporters and the people of this district knew where my funds distributed to (last) were going."

Whenever asked, Pence said, he has told contributors about his personal use of campaign funds. But he said it's impossible to communicate with everyone who has donated money.

Many people who support Pence were unaware of how he has been using contributions.

(SEE PENCE, PAGE A2)

## Pence's use of funds not unique

By JEFF MADSEN

DAILY JOURNAL STAFF WRITER

A SEVERAL REPUBLICAN congressional challenger has been using campaign contributions to meet personal expenses.

A review of Federal Election Commission reports shows that Richard Hawkins, a Fort Wayne minister, has been making house payments, paying utility bills and pocketing some of his contributions.

Hawkins is challenging Rep. Jim Long for Indiana's 9th District seat.

Hawkins and Greenwood attorney Mike Pence are the only two Indiana congressional candidates using cam-

pus, according to the election commission reports.

Such use of contributions is legal under federal election laws, provided the expenditures are reported. Some government watchdog groups have called the practice "unusual." But a field representative for the National Republican Congressional Committee said Thursday in Franklin that

(SEE CAMPAIGNS, PAGE A2)

MORNING JOURNAL

(CONTINUED FROM PAGE A1)

Of 10 Johnson County and area Pence contributors contacted Friday, nine said they were unaware the candidate was using campaign funds for personal expenses before this week's published reports.

"I had no idea he was doing it," said Alan Dreyer, a retired Greenwood bank chairman who donated \$400. "I'm upset with him... I don't approve of it."

Dreyer added that he may withhold further contributions.

The names of campaign contributors and the amount of support are public record and were obtained at the secretary of state's office in Indianapolis. Pence said he has received 3,000 contributors.

The maximum individual donation is \$1,000 for the primary and \$1,000 for the general election.

Kather L. Gilbert, a retired Greenwood woman who contributed \$25, said she was disappointed with how Pence is using the money.

"I don't think that's the way campaign contributions should be used," she said.

Michael Garry, a Greenwood dentist who has contributed \$50, said after learning of the practice this week, "It doesn't bother me."

But Garry predicted it will hinder Pence's chances in what is expected to be a tightly contested race.

"I think it will be very damaging... It will offend a lot of people," Garry said. "I don't know what he can do, the deed has already been done."

Other supporters defended Pence.

One supporter said he has been aware for months that Pence is using some campaign funds for living expenses. But he declined to speak publicly.

Another supporter, Dr. Frank Ramsey, an Indianapolis physician who has given \$1,400 this year, said that although he was unaware of the use of funds, "I don't care one bit."

"He's running for Congress, he has to eat and so forth," Ramsey added.

C.E. Owsen, a Greenwood secretary who has contributed \$100 this year said that as long as Pence follows the law, he is not concerned.

Federal Election Commission off-

icals said this week that Pence's actions are legal.

Owsen suggested the funding could have been handled differently.

"It would have been better structured to put it in a salary," he said, instead of having individual payments.

Kearveth Thurmond of Greenwood said Pence has reacted well to the reports.

"The best thing he's doing is addressing it the best he can," said Thurmond, an insurance company executive. "I don't have problems with it as long as he is using it for bare essentials."

But other contributors commented that Pence's use of campaign funds seems to contrast with his stance calling for campaign reform, particularly his refusal to accept money from special-interest groups.

"I don't approve of PACs (political action committees), but this is as bad if not worse," Dreyer said.

Elizabeth H. Plaver, a retired Greenwood resident who donated \$25, said: "I know he doesn't accept contributions from PACs, and it doesn't seem to be going with this."

But Plaver expressed concern that congressmen use taxpayers' money for paid mailings. She said she'll probably continue contributing to Pence.

Maurice "Woo" Wierzbick of Bergersville, who gave \$50, said he is upset with the loser of the Pence-Sharp campaign.

"All I want them to do is to stop throwing mud at each other and get down to the issues," he said.

Another contributor said he did not know about the campaign issues until this week and declined comment.

Pence campaigned Friday night at the Randolph County Fair and said the people generally were supportive.

Many people have reacted uncomfortably at first because they've never thought about how a full-time candidate makes a living, he said.

After thinking about it, most people have accepted it, Pence said. "I don't think the majority of people begrudge a guy a right to make a living," he said.

# • Campaigns

(CONTINUED FROM PAGE A1)

the practice is widespread.

Terry Dean Holt, southern region representative for the NRCC, said several candidates are using bottom to help meet expenses during campaigns.

Good candidates don't always come from wealthy backgrounds and need to get help, Holt said.

Holt's election commission report shows that he predicted \$2,000 in contributions between April 19 and June 30. In addition, the report shows two \$100 house payments to Standard Food Stores and payments totaling \$300 to utility companies.

Holt gave up his post as senior pastor of Blackhawk Baptist Church in Fort Wayne to run against Long, a first-term legislator.

Long's 1988 campaign was paid a \$30,000 salary, \$10,000 housing allowance

and a \$1,000 bonus by the church, according to a financial disclosure statement filed with the U.S. House of Representatives.

Additionally, Hawks earned more than \$5,000 in rent income and up to \$2,000 in income from dividends and interest, the report shows.

Hawks and Pence are the two best-financed challengers among the races in Indiana. Through June 30, Hawks had raised \$200,000 and Pence had brought in \$213,378.

Other challengers haven't done as well in fund-raising.

Republican Bill Costas of Charleston has raised \$5,500 this year for his bid to unseat Democrat Rep. Pete Vukobratovich of Merrillville in the state's 1st District.

Democrat James Frick of Indianapolis has raised \$6,422 in his bid to unseat Republican Rep. Dan Burton of Indianapolis in the state's 6th District.

And by April 30, the last report on file, Democrat John Riley Sr. of Clinton had not raised a penny in his bid to unseat Republican Rep. John T.

Myers of Coriugan in the 10th District.

The election commission shows that contributions from meals, travel and bumper stickers are common.

Campaign contributions are used to pay for:

- Spurred sign - Republican John Miller spent \$1,020 for signs.
- Club memberships - Buffalo the Columbia Club.
- Other campaigns - Rep. Frank McClosky, a Democrat from Bloomington, gave \$1,000 to candidates for state offices.
- Fund-raisers - Rep. Lee Hamilton, a New York Democrat, spent \$300 on tickets for the state Democratic Central Committee fund-raiser.
- Events - Rep. Andy Jacobs, a Democrat from Indianapolis, spent \$40 on two tickets to a luncheon at Black Expo.

# Neal's Opponent Charges Mortgage Payments to His Campaign

By Jeff Healey  
JOURNAL WASHINGTON BUREAU

## WASHINGTON

At the same time that he rebuked Rep. Stephen L. Neal for spending political contributions on a campaign headquarters, Kenneth D. Bell was charging house-mortgage payments to his campaign.

According to his most recent report to the Federal Election Commission, Bell billed his campaign \$2,043.93 for house payments and \$558.82 for car payments in May and June. The house is his residence, Bell said yesterday, and the car was for the campaign.

Bell, Neal's Republican challenger, said that he lent his campaign the money to make the mortgage payments, as well as more than \$20,000 for other expenses. If he beats Neal

in November, Bell said, he will ask his supporters to repay him for the house payments and other items covered by the loan.

"If we're not able to do this sort of thing, only the rich can run for Congress," said Bell, who resigned from the prestigious law firm of Wamble Cartye Sandridge and Rice in February to campaign full time.

Last month Bell accused Neal, a Democrat, of making a profit off his contributions by using campaign money to buy and improve a house on North Patterson Avenue. Neal bought the house in 1986 for his campaign headquarters, and the campaign has paid more than \$73,000 for its mortgage, insurance and repairs since 1987.

Bell said yesterday that his situation and Neal's are "like apples and oranges." The key

difference, Bell said, is that he lent his campaign the money needed to pay his mortgage while Neal spent campaign money directly on a building that he owns.

Neal agreed with Bell that the two situations are different. Bell is using campaign money for personal expenses, Neal said, and Neal's contributors are paying only for campaign expenses.

"Not one dime has ever gone for any personal expenses. Not one dime ever in 16 years. That is totally improper and would be totally in violation of our ethics code here," Neal said. Neal's payments for the campaign headquarters have been approved by the House ethics committee, he said.

Bell said that the improvements to the campaign headquarters that were paid for

with campaign money assure Neal of a profit whenever he sells the building. Neal said that the improvements, such as a new roof and furnace repairs, were intended not to increase the building's value, but to make it "functional and usable."

Bell is one of two Congressional candidates in North Carolina who are charging living expenses to their campaigns. The other is Republican Ted Blanton, who is challenging Democratic Rep. W.G. "Bill" Flauto in the 8th District.

Fred Eisland, a spokesman for the Federal Election Commission, said that candidates are free to spend donations on anything that they believe to be related to their campaign. That includes living expenses, Eisland said.

Ellen Miller of the Center for Responsive

Politics said: "The problem which this points up, I think, is the fact that a candidate is stretching the law because it's so incredibly difficult under the current system to raise enough money to keep his family going and run for office. In a sense, he's bending the system."

Bell's latest FEC report shows that he has advanced the campaign \$21,414 out of his pocket and taken out a loan for \$5,000 to pay campaign bills.

His campaign spent \$52,034, including the mortgage payments, from January through June, while raising \$26,056.

In the same period, Neal raised \$159,112 — including \$111,550 from political action committees — and spent \$87,703. He reported almost \$200,000 in cash reserves.

200040313405





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

Richard Bates, Executive Director  
Democratic Congressional Campaign Committee  
430 South Capitol Street  
Washington, D.C. 20003

RE: MUR 3107

Dear Mr. Bates:


This letter acknowledges receipt on August 9, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Rick Hawks, Rick Hawks for Congress Committee, Larry Stoppenhagen, as treasurer, Kenneth Bell, Ken Bell for Congress Committee, Mark N. Poovey, as treasurer, Ted Blanton, Blanton for Congress, Pete Teague, as treasurer, Mike Pence, and The People for Mike Pence, Michael W. Redford, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

Enclosure  
Procedures

2040313405



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

The People for Mike Pence  
Michael W. Redford, Treasurer  
435 E. Main Street  
Suite M  
Greenwood, IN 46142

RE: MUR 3107

Dear Mr. Redford:

The Federal Election Commission received a complaint which alleges that The People for Mike Pence and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

20040313407

If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Mike Pence

20040313403



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

Mike Pence  
229 W. Buffalo Drive  
Indianapolis, IN 46217

RE: MUR 3107

Dear Mr. Pence:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

90040815410



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1990

Blanton for Congress  
Pete Teague, Treasurer  
114 1/2 West Innes Street  
Salisbury, NC 28145

RE: MUR 3107

Dear Mr. Teague:

The Federal Election Commission received a complaint which alleges that Blanton for Congress and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. 5 437g(a)(4)(B) and 9 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Ted Blanton

20040313412



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1990

Ted Blanton  
320 W. Thomas Street  
Salisbury, NC 28144

RE: MUR 3107

Dear Mr. Blanton:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

20040315414



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1990

Ken Bell for Congress Committee  
Mark N. Poovey, Treasurer  
P.O. Box 24894  
Winston Salem, NC 27104

RE: MUR 3107

Dear Mr. Poovey:

The Federal Election Commission received a complaint which alleges that the Ken Bell for Congress Committee and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.


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If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Kenneth Bell

90040813416



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

Kenneth Bell  
4204 Redwing Circle  
Winston Salem, NC 27106

RE: MUR 3107

Dear Mr. Bell:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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20040813417

If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

97040813418



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

Rick Hawks for Congress Committee, Inc.  
Larry Stoppenhagen, Treasurer  
P.O. Box 5522  
Fort Wayne, IN 46895

RE: MUR 3107

Dear Mr. Stoppenhagen:

The Federal Election Commission received a complaint which alleges that the Rick Hawks for Congress Committee, Inc. and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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90040813419

If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Rick Hawks

20040815420



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 14, 1990

Rick Hawks  
6919 Forest Glen Court  
Fort Wayne, IN 46815

RE: MUR 3107

Dear Mr. Hawks:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3107. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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20040513421



If you have any questions, please contact Lawrence Parrish, the attorney assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel



BY: Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

90040313422

06C 7691

# Blanton



## CONGRESS

August 29, 1990

Mr. Lawrence Noble, Esq.  
General Counsel  
Federal Election Commission  
Washington, DC 20436

ATTENTION: LAWRENCE PARRISH, ESQ. RE: MUR 3107

Dear Mr. Parrish:

I am writing you as the Treasurer for the Blanton for Congress Committee.

This letter is filed in response to a Complaint filed by the Democratic Congressional Campaign Committee (D.C.C.C.) and designated by the Federal Election Commission as Matter Under Review ("MUR") 3107.

The D.C.C.C. alleges that Ted Blanton, candidate for the United States House of Representatives from the 8th Congressional District of North Carolina, violated the Federal Election Campaign Act of 1971, as amended, by receiving compensation for personal living expenses from the Blanton For Congress Committee, 105 W. Corriher Ave., Salisbury, North Carolina.

During the months February 1990 through June 1990 Mr. Blanton was reimbursed a total of \$11,660 by this campaign committee for certain of his living expenses incurred while campaigning for Congress. These funds were reported as expenditures by the campaign on every FEC report filed, and the funds reimbursed Mr. Blanton for such living expenses as groceries, utility bills and monthly mortgage payments. Mr. Blanton has a wife and four young children.

The Federal Election Commission has long held the view that campaigns have wide discretion over how funds are to be expended (See Advisory Opinions 1977-11 and 1978-3). Also, the wide latitude afforded candidates with regard to expenditures does allow for payment of living expenses. It could not be more clear that living expenses may be paid for by campaign funds. Advisory Opinion 1978-5, which we believe to be definitive, expressly allows for the use of campaign funds for living expenses. In Advisory Opinion 1978-5, the Commission opined that "payments for your personal living expenses would be permissible expenditures under the Act". I attach a copy of that opinion from my file.

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Further, in Advisory Opinion 1976-17, the Commission concluded that the payment of a candidate's living expenses incurred while "engaged in campaign activities...would be permissible expenditures". The D.C.C.C. attempts to blur the distinction between excess campaign funds and living expenses. This analogy is bankrupt.

The Commission clearly allows for living expense payments during a campaign. If there is a preexisting contract, payment for living expenses incurred during the campaign could be paid after the campaign. Excess campaign funds, i.e., those funds remaining after the campaign, may not be converted to personal use. There is no conversion of excess campaign funds in this case.

The D.C.C.C. has mangled the Commission's conclusions in several Advisory Opinions in order to assert the argument that candidates may not pay living expenses from campaign funds. We strongly believe that the D.C.C.C. should be sanctioned for its deliberate misinterpretations of Advisory Opinions. The issue of living expense payment by campaigns has been addressed by the Commission in several Advisory Opinions, and even the election experts made available to campaigns by the F.E.C. to answer questions tell campaigns that living expense payment by campaigns to candidates is fine.

The D.C.C.C. filed this complaint to be a nuisance. Because of this clear motive, we believe the Democratic Congressional Campaign Committee should be reprimanded in order to maintain the integrity of the Complaint process. The F.E.C. in this instance is being used to validate press releases by the D.C.C.C. This is the true fraud in this process.

Yours truly,

*Pete Jaeger*

Treasurer, Blanton for Congress  
Committee

Subscribed And Sworn Before Me This      day of August, 1990

*Joseph M. Davis*

(Notary Public)

My Commission Expires      My Commission Expires June 10, 1991

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[Campaign Funds may be used to offset a candidate's living expenses. Answer to Herbert Creech, Creech for Congress Committee, 359 Telford Avenue, Dayton, Ohio 45419.]

This refers to your request for an advisory opinion under 2 U.S.C. §437f concerning application of the Federal Election Campaign Act of 1971, as amended (the "Act") to the use of campaign contributions for ordinary and necessary (personal) living expenses during a campaign. Your request for reporting forms and a copy of the Act and regulations has been answered under separate cover.

Your letter states that you are a candidate for election to the United States House of Representatives and, in a telephone conversation with a member of our legal staff, you stated that your request concerns plans to expend campaign funds for your ordinary living expenses while a candidate.

The Act defines expenditure in 2 U.S.C. §431(f) as "a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made for the purpose of influencing the nomination . . . or election of any person to Federal office . . ." The Commission has held in several past advisory opinions that candidates and their principal campaign committees have wide discretion under the Act in deciding which expenditures will best serve their candidacies. See Advisory Opinions 1978-3, 1978-2, and 1977-11, copies enclosed. More specifically, with respect to the issue posed in your request the Commission concluded in Advisory Opinion 1976-17 that campaign funds of a vice presidential

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candidate could be spent to defray living expenses incurred while she was engaged in campaign activity. Advisory Opinion 1976-17; see also the Commission's response to Advisory Opinion Request 1976-84, copies enclosed. Thus payments for your personal living expenses would be permissible expenditures under the Act although subject to disclosure pursuant to 2 U.S.C. §434 and §104.2 of the Commission's regulations.

The Commission expresses no opinion as to the tax ramifications of the described expenditure since those issues are within the jurisdiction of the Internal Revenue Service.

This response constitutes an advisory opinion concerning application of a general rule of law stated in the Act or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Dated: March 10, 1978.

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006 7692

**VANHORNE, TURNER, STUCKEY & McCANNA**

**ATTORNEYS AT LAW**

COMMERCIAL CLUB BUILDING

112 SOUTH CEDAR STREET

POST OFFICE BOX 523

**AUBURN, INDIANA 46706**

90 AUG 31 AM 11:22

GRANT VANHORNE  
JEFFREY L. TURNER  
DONALD J. STUCKEY  
JAMES P. McCANNA

WINSLOW VANHORNE  
(1906-1989)

TEL: 219/925-1966  
FAX: 219/925-6166

CLARAMARY VANHORNE

**August 29, 1990**

Mr. Lawrence Parrish  
Federal Election Commission  
Washington, D. C. 20463

IN RE: MUR 3107

Dear Mr. Parrish:

I have just received Ms. Lois G. Lerner's letter of August 14, 1990, addressed to the "Rick Hawks For Congress Committee, Inc." in care of its treasurer, Larry Stoppenhagen regarding the above matter.

We request an extension of the time to respond to the complaint for an additional thirty (30) days through and including October 1, 1990. As you can imagine, we are in the midst of a campaign and it is difficult to collect all of the information that we feel would be necessary to respond to the complaint at this time.

Thank you for your kind considerations.

Very truly yours,

VAN HORNE, TURNER, STUCKEY & MCCANNA

  
Jeffrey L. Turner

JLT:dar

90 AUG 31 PM 3:41

FEDERAL ELECTION COMMISSION  
RECEIVED

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**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 3107

**NAME OF COUNSEL:** Jeffrey L. Turner

**ADDRESS:** VanHorne, Turner, Stuckey & McCanna  
Commercial Club Building  
Post Office Box 523  
Auburn, Indiana 46706

**TELEPHONE:** (219) 925-1966

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/29/90  
**Date**

Larry Stoppenhagen  
**Signature** -- Larry Stoppenhagen

**RESPONDENT'S NAME:** Rick Hawks For Congress Committee, Inc.

**ADDRESS:** BY: Larry Stoppenhagen, Treasurer  
P.O. Box 5522  
Fort Wayne, Indiana 46800

**HOME PHONE:** \_\_\_\_\_

**BUSINESS PHONE:** (219) 424-1000

20040813423



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 11, 1990

Jeffrey L. Turner, Esq.  
VanHorne, Turner, Stuckey & McCanna  
Commercial Club Building  
Post Office Box 523  
Auburn, Indiana 46706

RE: MUR 3107  
Rick Hawks for Congress  
Committee, Inc.

Dear Mr. Turner:

This is in response to your letter dated August 29, 1990, which we received on August 31, 1990, requesting an extension of 30 days until October 1, 1990 to respond to MUR 3107. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on October 1, 1990.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202)376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in black ink, appearing to read "Lois G. Lerner", written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

90040813429



OGC 7715

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE CHIEF COUNSEL

August 31, 1990

90 SEP -3 AM 11:48

Re: MUR 3107

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Commissioners:

This letter and attached affidavit are in response to the complaint filed by the Democratic Congressional Campaign Committee ("DCCC") on August 8, 1990 as referenced above. As will be demonstrated hereinafter the factual allegations, far from stating violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), are explicitly authorized by several Advisory Opinions of the Federal Election Commission ("FEC").

90 AUG 36 AM 10:52  
RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE CHIEF COUNSEL

Statement of the Facts

From January 19, 1990 through the date of this response, I have loaned to the Ken Bell for Congress Committee \$29,675.97. The Committee has to date made expenditures on my behalf of \$4976.84. These expenditures were for payment of the mortgage on my family's residence and the automobile I use nearly exclusively for campaign purposes. (Bell affidavit)

90 SEP 25 AM 10:06  
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FEDERAL ELECTION COMMISSION  
OFFICE OF THE CHIEF COUNSEL

Statement of the Law

The FEC has held since at least 1976 that

a candidate has discretion to determine what expenditures should be made during his or her campaign, and therefore any disbursements made and reported by the campaign committee as expenditures will be deemed to be for the purpose of influencing the candidate's election. Thus, payments from campaign funds to [the candidate] for living expenses, incurred while engaged in either campaign activities or party-building activity, would be permissible expenditures... AO 1976-17; see AO 1980-29; 1978-2; AO 1978-3; AO 1977-11.

The Commission has been unswerving in this position. AO 1976-53 stated that a principal campaign committee may permissibly make expenditures for a candidate's groceries, heat, mortgage and the like. See AO 1978-5 (payments for personal living expenses are permissible expenditures under the Act).

The Complaint's citation to the Act at 2 U.S.C. sec.439a does not alter the Commission's stand in the least. In AO 1980-49 the Commission specifically examined "use of campaign funds to defray a candidate's personal living expenses during a campaign" in light of the 1979 Amendments to the Act.

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The Commission concludes that the 1979 Amendments to the Act, specifically the provisions of sec.439a, do not affect the result reached in Advisory Opinion 1978-5. The Commission has stated in several advisory opinions that candidate's and their respective principle campaign committees have wide discretion under the Act as to how campaign funds may be spent. The Commission thus concludes that so far as the Act is concerned your personal living expenses during the course of a campaign may be defrayed from your campaign funds. (footnotes omitted)

AO 1980-49.

The Complaint's reliance on AO 1980-138 is misplaced as the situation examined there dealt with expenditure of funds for personal expenses during the time between election and taking office of a Senator. This is entirely distinct from my situation and that specifically addressed by the previously referenced Advisory Opinions. Nor have expenditures been made to me for compensation of "lost wages," making AO 1987-1 inapplicable. Finally, AO 1987-2 is inapplicable because campaign expenditures for my car payment is clearly campaign related. The nearly exclusive use of the vehicle is for campaign purposes.

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Discussion

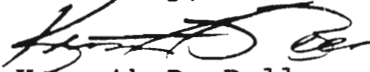
The above recitation of authorities mandates a finding that there is no reason to believe that the complaint sets forth a possible violation of the Act. It is quite obvious that the Complaint is baseless and was submitted for no reason other than harassment of me and my campaign, and to generate hoped-for negative publicity for my campaign. If these were not the motivations, there would have been at least some attempt to distinguish the Advisory Opinions cited above which are clearly on point. Further evidence of the insincerity of the Complaint is that the newspaper article submitted with it, from the Winston-Salem Journal of July 24, 1990, quotes Fred Eiland of the FEC to the effect that living expenses are allowable campaign expenditures. In fact, if this Complaint were under the jurisdiction of the Federal Courts, Rule 11 sanctions would be appropriate because of the lack of factual or legal foundation for the Complaint. Instead, the Complaint engages in gross sophistry in attempting to apply Advisory Opinions that deal with widely divergent factual situations to the present case.

The cited Advisory Opinions allow personal expenditures by the campaign from normal contribution sources. In my case such expenditures are particularly benign. I have loaned my campaign several thousands of dollars in excess of the amounts disbursed on my behalf.

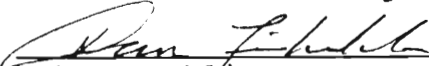
It is therefore respectfully requested that the Commission find no reason to believe that the Complaint sets forth a possible

violation of the Act, and close the file in the matter. Further, I waive whatever right I may have had under 2 U.S.C. sec.437g(a)(4)(B) and sec.437(a)(12)(A) to confidentiality of this matter. The DCCC's contemporaneous release of the Complaint to the press when filed with the Commission effectively emasculated this right, further evidencing the pure political motivation of the Complaint itself.

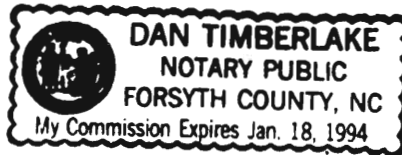
Sincerely,

  
Kenneth D. Bell

SUBSCRIBED AND SWORN TO BEFORE ME  
this 31 day of August, 1990.

  
Notary Public

My Commission Expires:  
\_\_\_\_\_



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I, Kenneth D. Bell, being duly sworn, do hereby depose and say:

1) I am the Republican nominee for the Congressional seat for the Fifth District of North Carolina, and the subject of the above referenced Complaint filed with the Federal Election Commission.

2) I am familiar with the records of my campaign dealing with loans from me to my campaign and with expenditures made on my behalf by the campaign.

3) The following schedule of loans and expenditures completely and accurately reflects such activity by my campaign without omission through the date of this affidavit.


	LOANS		DISBURSEMENTS
	personal funds	borrowed	
1/19	100.00		
1/31	150.00		
3/1			279.41 (auto)
4/9		5,000.00	
4/20	6,500.00		279.41 (auto)
5/2	10,000.00		
5/8			279.41 (auto)
5/15	1006.99		
5/16			1006.99 (mortgage)
5/31			279.41 (auto)
6/1	2650.00		
6/14	1006.99		
6/18			1006.99 (mortgage)
6/29			279.41 (auto)
7/2	300.00		
7/10	500.00		
7/13	1006.99		1006.99 (mortgage)
7/30			279.41 (auto)
8/3	500.00		
8/17	955.00		
8/30			279.41 (auto)

4) Loans by me to my campaign, from both personal and borrowed sources, totals \$29,675.97. Total disbursements by the campaign for personal living expenses is \$4976.84.


5) The automobile upon which the campaign has made payments was purchased new at the end of January, 1990. It is registered in my name and financed for a period of five years with equal monthly installments until paid. All costs of insurance, taxes, maintenance and fuel are paid for from personal funds. Essentially all of the miles put on the vehicle have been campaign related.

Further your affiant sayeth not.

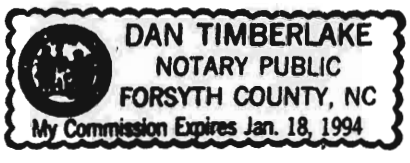
10040313433

  
Kenneth D. Bell

SUBSCRIBED AND SWORN TO BEFORE ME  
this the 31 day of August, 1990.

  
Notary Public

My Commission Expires:  
\_\_\_\_\_



90040813434

**JACK L. BAILEY & ASSOCIATES**

ATTORNEYS AT LAW  
(IN ASSOCIATION WITH JACK L. BAILEY, P.C.)  
(NOT A PARTNERSHIP)

LIBRARY PARK OFFICE COMPLEX  
633 LIBRARY PARK, SUITE J  
POST OFFICE BOX 159  
GREENWOOD, INDIANA 46142-0159

JACK L. BAILEY  
MICHAEL R. PENCE  
DETTA H. STEINMEIZ

**HAND DELIVERED**

OGC 7759

90 SEP -5 AM 11:55

TELEPHONE  
(317) 882-7811  
FAX: (317) 882-7839

September 4, 1990

Lawrence Noble, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 "E" Street, N.W.  
Washington, D.C. 20463

ATTENTION: LAWRENCE PARRISH

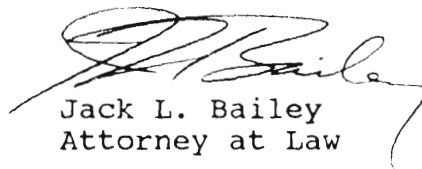
Dear Mr. Parrish:

I hereby request that your office grant the People For Pence Campaign, named in MUR 3107 as a Respondent, a 20 day extension in the deadline for the filing of People For Pence's response to the commission. The letter from the FEC, dated August 14, 1990, was received by our campaign on the following Tuesday, August 21, 1990. We, therefore, request that the deadline be moved to September 10, 1990.

The People For Pence Campaign requests this extension to ensure receipt by the Commission of an authoritative and comprehensive response.

Kindest regards,

JACK L. BAILEY & ASSOCIATES

  
Jack L. Bailey  
Attorney at Law

JLB:lgr

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OFFICE OF GENERAL COUNSEL  
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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 11, 1990

Jack L. Bailey, Esq.  
Library Park Office Complex  
633 Library Park, Suite J  
Post Office Box 159  
Greenwood, Indiana 46142-0159

RE: MUR 3107  
People for Pence

Dear Mr. Bailey:

This is in response to your letter dated September 4, 1990, which we received on September 5, 1990, requesting an extension of 20 days until September 10, 1990 to respond to MUR 3107. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on September 10, 1990.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in dark ink, appearing to read "L. G. Lerner", written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

20040813456

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# JACK L. BAILEY & ASSOCIATES

ATTORNEYS AT LAW  
(IN ASSOCIATION WITH JACK L. BAILEY, P.C.)  
(NOT A PARTNERSHIP)

LIBRARY PARK OFFICE COMPLEX  
633 LIBRARY PARK, SUITE J  
POST OFFICE BOX 159  
GREENWOOD, INDIANA 46142-0159

90 SEP 10 AM 10:39

JACK L. BAILEY  
MICHAEL R. PENCE  
DEETTA H. STEINMETZ

**HAND DELIVERED**

TELEPHONE:  
(317) 882-7811  
FAX: (317) 882-7839

September 7, 1990

90 SEP 10 PM 12:22

FEDERAL ELECTION COMMISSION  
RECEIVED

General Counsel  
Federal Election Commission  
999 E. Street, N.W.  
Washington, D.C. 20463  
Re: MUR 3107  
Attn: Lawrence Noble

Dear Commissioners:

This memorandum is in response to the complaint filed by the Democratic Congressional Campaign Committee (hereinafter, "DCCC"). DCCC alleges that a violation of the Federal Election Campaign Act of 1971, as amended, occurred because of the payment by People For Pence (hereinafter "Pence") of certain living expenses of candidate Mike Pence during that time which Mr. Pence is campaigning for the Second District of Indiana seat in the U.S. House of Representatives.

FACTUAL:

DCCC alleges that Pence has used contributions made to his campaign committee for payment of personal living expenses. Specifically, DCCC alleges that Mr. Pence received approximately \$1,000 a month in campaign committee funds for payment of the mortgage on his home. Also alleged is that Mr. Pence received from the campaign committee approximately \$222 a month to meet payments on an automobile. Finally, DCCC alleges that various other miscellaneous living expense payments were made.

LEGAL:

The Federal Election Commission (F.E.C.) affords a candidate a great deal of discretion in campaign expenditures. Any expenditures made which are legal, are deemed to be made for the purpose of influencing the election. This leeway in the payment of expenditures no doubt allows for payment of a candidate's living expenses.

Advisory Opinions handed down by the F.E.C. clearly validate this assertion. In Advisory Opinion number 1978-5, the F.E.C. allowed for the payment of living expenses of a candidate by the campaign committee. In Advisory Opinion 1980-49, the results of Advisory Opinion 1978-5 were reaffirmed. A candidate was informed

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by the F.E.C. in this Advisory Opinion that:

"personal living expenses during the course of a campaign may be defrayed from your campaign funds"

In Advisory Opinion 1982-64, the F.E.C. allowed a candidate to pay living expenses during the campaign using the proceeds from a loan.


DCCC cited and intentionally misinterpreted several Advisory Opinions. None of the Advisory Opinions cited by the DCCC conclude that candidates have been precluded by the F.E.C. from paying living expenses from campaign funds during the campaigns.

SUMMARY:


DCCC filed this complaint without any legal basis. The law and Advisory Opinions are clear. Living expenses can be paid for by the campaign committee during the campaign. Complainant's misinterpretation of the Advisory Opinions in the complaint should not be sanctioned by the F.E.C.

In closing, Mike Pence and the People For Pence campaign committee request that for the reasons stated herein, the Commission find no reason to believe that the complaint sets forth a possible violation of the Act and accordingly, that the Commission close the file in the matter.

Respectfully submitted,

  
\_\_\_\_\_  
Jack L. Bailey,  
Attorney at Law

Subscribed and sworn to before me this 9th day of September, 1990.

  
\_\_\_\_\_  
Notary Public,  
Residing in Johnson County, IN

My Commission Expires:

8-12-92

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FEDERAL ELECTION COMMISSION  
MAIL ROOM

**VANHORNE, TURNER, STUCKEY & MCGANNA**

ATTORNEYS AT LAW  
COMMERCIAL CLUB BUILDING  
112 SOUTH CEDAR STREET  
POST OFFICE BOX 523  
AUBURN, INDIANA 46706

90 OCT -3 AM 10:22

GRANT VANHORNE  
JEFFREY L. TURNER  
DONALD J. STUCKEY  
JAMES P. MCCANNA  
  
WINSLOW VANHORNE  
OF COUNSEL

TELEPHONE  
219/925-1966  
  
FACSIMILE  
219/925-6166

October 1, 1990

Federal Election Commission  
Washington, D.C. 20463

ATTN: Mr. Lawrence Parrish

RE: MUR3107

Dear Mr. Parrish:

This letter is in response to your agency's letter of August 14, 1990, concerning the complaint filed by the Democratic Congressional Campaign Committee against Rick Hawks, a candidate for the United States House of Representatives from the 4th District of Indiana.

FACTUAL SUMMARY

The complaint generally alleges violation of Federal Election Commission regulations and law based upon use by Mr. Hawks of approximately \$4,500 in campaign contributions to cover living expenses of the candidate, such as a home mortgage, health insurance and utility bills. The campaign also provides small amounts from time to time to assist Mr. Hawks in purchasing food for his family.

Mr. Hawks is not employed, having resigned entirely from his employment shortly after announcing his candidacy in March of 1990. He received no severance pay, has no other source of income except a small amount from a rental property he and his wife own.

All of the funds which the campaign committee has paid to or on behalf of Mr. Hawks have been fully reported on Federal Election Commission reports. Many contributors were aware, in advance, of Mr. Hawks' need for living expenses since he had no other income. Since the announcement of the complaint being filed by the Democratic politicians, a sizable amount of contributions have been voluntarily made to the campaign committee to be used expressly for the candidate's living expenses.

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OFFICE OF THE CLERK  
FEDERAL ELECTION COMMISSION

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Note that Ms. Long receives a full salary from the United States Government, unlimited travel expenses to and from Washington, D.C. and the District, fully paid staff, and government telephone lines, all of which from time to time have been used to transport her or facilitate her in her campaigning activities. Not only has she not reported those amounts on her Federal Election Commission Reports, but for some reason she feels it is not ethically or morally important to disclose use of tax payer funds to assist her campaign efforts.

#### LEGAL DISCUSSION

The FEC, through a long line of cases, has established the legitimacy of these types of expenditures from campaign treasuries. A tenet of the Federal Election Commission Act is that candidates and their principal campaign committees enjoy wide discretion under the Act in deciding how campaign funds may be spent, AO 1980-29, and which expenditures will best serve their candidacies AO 1928-2; See AO 1977-1; AO 1977-11; AO 1977-60.

The theory behind the FEC's holding is that:

A candidate has discretion to determine what expenditures should be made during his or her campaign. Any disbursements reported by the campaign committee as expenditures will be deemed to be for the purposes of influencing the candidates election. Thus, payments from campaign funds to [a candidate] for living expenses, incurred when engaged in either campaign activities or party-building activity, would be permissible expenditures and subject to disclosure under 2 U.S.C. Section 434. AO 1976-17.

Thus the FEC has consistently ruled that "personal living expenses during the course of a campaign may be defrayed from [a candidate's] campaign funds." AO 1980-49. A principal campaign committee may lawfully pay for a candidate's groceries, heat, mortgage and the like, since the candidate "is on leave without pay from his job while seeking federal office". AO 9176-53. Mr. Hawks has actually resigned his position and has no agreement or understanding of returning to his prior employment.

In fact, if the FEC started down the long and slipping slope of prohibiting such use of funds, what criteria would it use to distinguish appropriate and inappropriate contributions? Are newspaper subscriptions prohibited? Gasoline for travel to and from the candidate's home? Meals on the road while campaigning? Or consider the candidate who is employed (like Ms. Long), or the paycheck of the spouse of a candidate. Is the spouse prohibited from a paycheck because, as the Democrats complain, it frees up other money to use for campaigning?

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Page Three  
October 1, 1990

Several persons have donated money to the campaign expressly earmarking them for the candidate's personal living expenses. The committee has and will continue to fully report those contributions and render them subject to the limits and prohibitions of the Act. AO 1978-40; AO 1976-7.

The FEC has consistently and historically held that the use of campaign funds for personal living expenses of the candidate is entirely legitimate. It is clear that the complaint filed by the Democratic Congressional Campaign Committee is purely and solely politically motivated, attempting to attract adverse publicity in the race between Mr. Hawks and Ms. Long in Indiana's Fourth District.

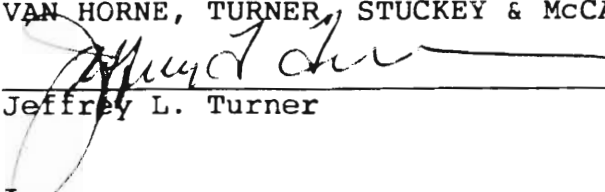
CONCLUSION

Ms. Long's supporters complain that a campaign should be a sacrifice for the candidate. Mr. Hawks has made a severe sacrifice - he entirely left his employment so as to have no conflict of interest. Perhaps Ms. Long - who is being paid by the tax payers - should do the same.

The Commission should find that there is no reason to believe that the complaint sets forth possible violation of the Act and this matter should be closed.

Respectfully submitted,

VAN HORNE, TURNER, STUCKEY & McCANNA

  
\_\_\_\_\_  
Jeffrey L. Turner

cc: Rick Hawks For Congress, Inc.

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90 OCT 19 AM 10:04

FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 19, 1990

**SENSITIVE****MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner *LL*  
Associate General Counsel

SUBJECT: MUR 3107  
Waiver of Confidentiality

On October 1, 1990, a waiver of confidentiality in the above-mentioned matter was received from Respondent Kenneth D. Bell. The other Respondents (Ted Blanton, Rick Hawks and Mike Pence) have not waived confidentiality. Therefore, the waiver pertains solely to the information in the MUR concerning to Kenneth Bell and the Ken Bell for Congress Committee and Mark N. Poovey, as treasurer.

By making this waiver, Kenneth Bell has requested that the Commission not apply the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) to this matter. However, that section merely provides that any notification or investigation shall not be made public by the Commission without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. By its terms, Section 437g(a)(12)(A) does not impose an affirmative duty on the Commission to publicize this matter at this time as it pertains to Kenneth Bell and the Ken Bell for Congress Committee and Mark N. Poovey, as treasurer. Therefore, this Office will respond to requests for information subject to the following considerations. First, requests must be in writing. Second, such requests would be considered by the Commission subject to the provisions of the Freedom of Information Act, the Government in the Sunshine Act, and all relevant privileges which would limit or preclude the release of such requested information.

**RECOMMENDATION**

Approve the attached letter.

## Attachment

1. Waiver
2. Letter

90040813442

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Kenneth Bell and the Ken Bell ) MUR 3107  
for Congress Committee, and )  
Mark N. Poovey, as treasurer - )  
Waiver of Confidentiality. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 23, 1990, the Commission decided by a vote of 6-0 to approve the letter, as recommended in the General Counsel's Memorandum dated October 19, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

10-23-90

Date

*Marjorie W. Emmons*

Marjorie W. Emmons  
Secretary of the Commission

Received in the Secretariat: Friday, Oct. 19, 1990 10:04 a.m.  
Circulated to the Commission: Friday, Oct. 19, 1990 12:00 p.m.  
Deadline for vote: Tuesday, Oct. 23, 1990 4:00 p.m.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 26, 1990

Kenneth Bell  
Ken Bell for Congress Committee  
P.O. Box 24894  
Winston Salem, NC 27104

RE: MUR 3107

Dear Mr. Bell:

This is in response to your letter dated August 31, 1990, wherein you waived your right to confidentiality in the above-captioned matter, pursuant to 2 U.S.C. § 437g(a)(12)(A). The waiver is hereby acknowledged by the Federal Election Commission.

The Commission will consider requests for information concerning this matter subject to the following considerations. First, requests must be in writing. Second, such requests will be considered by the Commission subject to the provisions of the Freedom of Information Act, the Government in Sunshine Act, and all relevant privileges which limit or preclude the release of such requested information.

Please note that this waiver pertains to information concerning you and the Ken Bell for Congress Committee, and does not pertain to any other respondents in this matter. Thus, you and the Ken Bell for Congress Committee may not disclose any information pertaining to the other respondents in this matter until notified by the Commission that the entire file in this matter is closed.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

By: Lois G. Lerner  
Associate General Counsel

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90 OCT 25 PM 3:35

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

FIRST GENERAL COUNSEL'S REPORT

MUR # 3107  
DATE COMPLAINT RECEIVED  
BY OGC: August 9, 1990  
DATE OF NOTIFICATION TO  
RESPONDENTS: August 14, 1990  
STAFF MEMBER: Lawrence D. Parrish

COMPLAINANT: Richard Bates, Democratic Congressional Campaign  
Committee

RESPONDENTS: Mike Pence  
  
The People for Mike Pence and Michael W. Redford,  
as treasurer  
  
Rick Hawks  
  
Rick Hawks for Congress Committee, Inc. and Larry  
Stoppenhagen, as treasurer  
  
Kenneth Bell  
  
Ken Bell for Congress Committee and Mark N.  
Poovey, as treasurer  
  
Ted Blanton  
  
Blanton for Congress and Pete Teague, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441b  
2 U.S.C. § 441d(a)  
11 C.F.R. § 113.1(e)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

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I. GENERATION OF MATTER

This matter was initiated by a complaint from Richard Bates, Executive Director of the Democratic Congressional Campaign Committee (DCCC). (Attachment 1). Mr. Bates alleges that the following candidates and their principal committees have violated 2 U.S.C. § 439a, by using campaign funds for personal purposes: Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer (PMP); Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer (RHCC); Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer (KBCC); Ted Blanton, Blanton for Congress and Pete Teague, as treasurer (BFC). The Complainant alleges that the four candidates have used contributions made to their campaign committees for personal living expenses.

II. FACTUAL AND LEGAL ANALYSIS

A. Statement of the Law

Pursuant to 2 U.S.C. § 439a, excess campaign funds may be used by a candidate to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office; and/or donated to qualified charitable organizations; and/or transferred without limit to any national, state or local political party committee; or used for any other lawful purpose except that with respect to any individual who was not a Senator or Representative in Congress on January 8, 1980, no such amount may be converted by any person for any personal use.

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**B. Facts**

The Complainant's allegations in this matter are based on newspaper accounts which the Complainant alleges detail the illegal use of campaign funds for personal expenses. The Complainant's allegations in this matter are as follows:

Ted Blanton: Between February and June, Blanton received close to \$12,000 from his campaign to pay his personal living expenses. In addition, he received several hundred dollars each month to cover the cost of his meals and transportation. One of the newspaper reports points out that this is over one dollar for every ten dollars raised by Blanton's campaign. The monies are used to pay Blanton's home mortgage, utility bills, and baby-sitting expenses. Yet according to his Ethics in Government Act report, Mr. Blanton earned over \$42,000 last year in his law practice.

Kenneth Bell: Mr. Bell has received from his campaign over \$2,000 in house payments and close to \$600 in payments on a personal car.

Rick Hawks: Hawks' campaign is out over \$4,500 in living expenses to cover the candidate's mortgage, health insurance, and utility bills. In addition, Hawks has received two \$1,000 payments of what one newspaper calls "pocket money." The FEC reports do not disclose what this "pocket money" was spent for. Mr. Hawks' Ethics in Government Act report discloses that his 1989 salary came close to \$50,000 and, for 1990 so far, he has received close to \$15,000. He also receives rental payments on a house owned by him.

Mike Pence: Mike Pence has been charging his campaign almost \$1,000 per month to cover his home mortgage, and \$222 per month to cover his wife's car payment. In addition, his campaign committee has covered the cost of his groceries, parking tickets, golf greens fees, and has paid a VISA bill of close to \$1,500. Yet Pence's Ethics in Government Act report discloses that he earned over \$75,000 last year and held over \$50,000 worth of stock. While Pence claims he took a 30 percent cut in his salary to run for office, he still earned \$27,500 last year from his law practice, while his wife earned \$35,753 as a

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school teacher. Their investments also brought them \$12,500 in interest and dividend payments.

The Complainant also notes in the complaint that none of the four candidates mentioned-aboved were members of Congress on January 8, 1980, therefore, 2 U.S.C. § 439a would prohibit them from using campaign funds for any personal use. The Complainant further alleges that the expenses for the candidates in this matter have no connection with the conduct of the candidates' campaigns. The Complainant also makes reference to Advisory Opinions in which the Complainant claims the Commission ruled that the Act prohibits the above-mentioned activity.

On August 29, 1990, the BFC, through Pete Teague, as treasurer, responded to the complaint. (Attachment 2). In response to the Complainant's allegation that Ted Blanton used campaign funds to pay for personal living expenses, Mr. Teague states that during February through June of 1990, Mr. Blanton was reimbursed a total of \$11,660 from BFC for certain living expenses incurred while campaigning for Congress. Mr. Teague further states that "These funds were reported as expenditures by the campaign on every FEC report filed, and the funds reimbursed Mr. Blanton for such living expenses as groceries, utility bills and monthly mortgage payments." Mr. Teague also noted that Mr. Blanton has a wife and four children.

In defense of the Complainant's allegations, Mr. Teague makes reference to Advisory Opinions (1977-11, 1978-3, 1978-5 and 1976-17) which BFC asserts permit wide discretion over how funds are to be expended, and which permit payment of living

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expenses for candidates. In addition Mr. Teague states:

The Commission clearly allows for living expense payments during a campaign. If there is a pre-existing contract, payment for living expenses incurred during the campaign could be paid after the campaign. Excess campaign funds, i.e., those funds remaining after the campaign may not be converted to personal use. There is no conversion of excess campaign funds in this case.

On September 7, 1990, the PMP, through their counsel, responded to the complaint. (Attachment 3). Counsel did not dispute any of the factual allegations, but did refute the Complainant's assertion that PMP was in violation of the Act by the paying of certain living expenses of candidate Mike Pence. In defense of the Complainant's allegations, Counsel makes reference to Advisory Opinions (1978-5, 1980-49 and 1982-64). Counsel also states that the "DCCC cited and intentionally misinterpreted several Advisory Opinions." Counsel further states: "None of the Advisory Opinions cited by the DCCC conclude that candidates have been precluded by the F.E.C. from paying living expenses from campaign funds during the campaigns."

On August 31, 1990, candidate Ken Bell responded to the complaint.<sup>1</sup> (Attachment 4). Candidate Bell asserts that he loaned the KBCC, from January 19, 1990 through August 31, 1990, a total of \$29,675.97. He further asserts that the total for expenditures on his behalf by KBCC was \$4976.84, and that the

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1. It should be noted that Candidate Bell's response also included a statement waiving confidentiality under 2 U.S.C. § 437g(a)(12)(A). A memorandum regarding this waiver has previously circulated to this Commission.

expenditures were for payment of the mortgage on his family's residence and his automobile that he uses exclusively for campaign purposes. Candidate Bell also enclosed an affidavit along with his response outlining the loans that he has made to KBCC and disbursements received by him from KBCC.

(Attachment 5).

In defense of the Complainant's allegations, Candidate Bell also makes reference to Advisory Opinions (1976-17, 1980-29, 1978-2, 1978-3, 1977-11, 1976-53, 1978-5, 1980-49). Candidate Bell argues that these Advisory Opinions allow personal expenditures by the campaign from normal contribution sources. Candidate Bell further argues that the Complainant's reliance on the Advisory Opinions noted (1980-138, 1987-1 and 1987-2) in the complaint were inapplicable to his situation and that the Complainant did not attempt to distinguish the Advisory Opinions that were on point.

Candidate Bell also asserts "that the complaint is baseless and was submitted for no reason other than harassment of me and my campaign, and to generate hoped-for negative publicity for my campaign."

On October 1, 1990, the RHCC, through their counsel, responded to the complaint. (Attachment 6). Counsel did not dispute any of the factual allegations, but did refute the Complainant's assertion that RHCC was in violation of the Act by the paying of certain living expenses of candidate Rick Hawk. In defense of the Complainant's allegations, Counsel makes reference to Advisory Opinions (1980-29, 1928-2, 1977-1,

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1977-11, 1977-60, 1976-17, 1980-49 and 1976-53).

Counsel also indicates that Mr. Hawks is not employed at this time, that Mr. Hawks had resigned from his employment after announcing his candidacy, that he received no severance pay and that the campaign has provided a small amount from time to time to assist Mr. Hawks in purchasing food for his family.

Counsel further indicates that several persons have made donations to Candidate Hawks' campaign expressly earmarking them for the candidate's personal living expenses. Counsel also indicated that all of these contributions have been fully reported as required.

C. Analysis

The major issue in this complaint is whether a campaign may pay for a candidate's personal living expenses when the candidate is actively campaigning.

As mentioned-above, the Complainant asserts that 2 U.S.C. § 439a prohibits the use of campaign funds for any personal use if an individual was not a Member of Congress on January 8, 1980. The Complainant alleges that none of the four Respondents in this matter were in Congress on January 8, 1980 and, therefore, they would be prohibited by law from using campaign funds for personal expenses. Furthermore, the Complainant asserts that the Respondents' campaigns are paying the Respondents for lost wages.

The Complainant's assertions are based on 2 U.S.C. § 439a prohibition of using excess campaign funds for personal expenses. According to 11 C.F.R. § 113.1(e), "Excess campaign

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funds" mean amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures. The Respondents in this matter all argue the same point in defense of the Complainant's assertions, and claim that the Complainant analysis is not applicable to their situations because they are not holders of Federal office and using excess campaign funds for personal expenses.

In numerous Advisory Opinions, the Commission has consistently stated that because the Act places no specific restrictions upon the types of disbursements that may influence a Federal election, campaigns have wide discretion in deciding how to spend their funds. In Advisory Opinion 1980-49, the Commission addressed the issue of the prohibition contained in 2 U.S.C. § 439a on conversion of excess campaign funds to personal use with regard to candidates who were not holders of Federal Office on January 8, 1980. The Commission stated as follows:

The Commission concludes that the 1979 Amendments to the Act, specifically the provisions of §§ 439a, do not affect the result reached in Advisory Opinion 1978-5. The Commission has stated in several advisory opinions that candidates and their respective principal campaign committee have wide discretion under the Act as to how campaign funds may be spent. The Commission thus concludes that so far as the Act is concerned your personal living expenses during the course of a campaign may be defrayed from your campaign funds. (Footnotes omitted)

See also Advisory Opinions 1980-29, 1978-5, 1978-2, 1977-1, and 1976-64.

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The Act does, however, restrict the use of excess funds. Pursuant to 2 U.S.C. § 439a, excess campaign funds may be used by a candidate to defray ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office; and/or donated to qualified charitable organizations; and/or transferred without limit to any national, state or local political party committee; or used for any other lawful purpose except that with respect to any individual who was not a Senator or Representative in Congress on January 8, 1980, no such amount may be converted by any person for any personal use.

The circumstances in this matter fall squarely within those addressed in previous Advisory Opinions (1980-49, 1980-29, 1978-5, 1978-2, 1977-1, 1976-64, etc...) and are controlled by the Commission's interpretation of 2 U.S.C. § 439a made in those opinions.<sup>2</sup> Therefore, we recommend no reason to believe in this

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2. There is no indication that the Commission has superseded their ruling in Advisory Opinion 1980-49. Therefore, the Advisory Opinions cited in the complaint are distinguishable. In Advisory Opinion 1987-1, a candidate who was defeated in his attempt to win a Congressional seat questioned the Commission with the issue of whether his Committee's payment of his claim for lost wages would be a prohibited conversion of campaign funds to his personal use. In Advisory Opinion 1980-138, a Senator-elect questioned the Commission as to whether excess campaign funds may be used to pay necessary costs incurred by him and his staff during the period of transition from the date of the election to the date that he was to be sworn in as a Senator. Both Advisory Opinions 1981-2 and 1987-2 dealt with current Members of the House of Representatives. In Advisory Opinion 1981-2, the Commission dealt with the issue of whether the payment, by a Member of Congress, from excess campaign funds constituted personal use. Payment was for the cost of a reception, held for his constituents on the day of his swearing-in to office. In Advisory Opinion 1987-2, the Commission dealt with the question of whether a Committee could purchase an automobile for a Member of Congress for travel to and from re-election

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matter.

Based upon the foregoing, the Office of General Counsel concludes that the Respondents in this matter have not violated 2 U.S.C. § 439a. Therefore, it is this Office's recommendation that the Commission find no reason to believe that the Respondents have violated 2 U.S.C. § 439a in this matter.

**III. RECOMMENDATIONS**

1. Find no reason to believe that Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer, violated 2 U.S.C. § 439a.

2. Close the file in this matter.

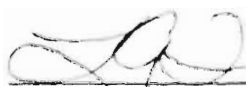
3. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

Date

10/25/90

BY:

  
Lois G. Lerner  
Associate General Counsel

**Attachments**

1. Complaint
2. Response from BFC
3. Response from PMP
4. Response from Ken Bell
5. Affidavit from Ken Bell
6. Response from RHCC

(Footnote 2 continued from previous page)  
related events and for events related to his elected office. None of the above-mentioned situations are applicable in this matter.

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FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *OK*  
COMMISSION SECRETARY

DATE: OCTOBER 31, 1990

SUBJECT: MUR 3107 - FIRST GENERAL COUNSEL'S REPORT  
DATED OCTOBER 25, 1990.

The above-captioned document was circulated to the Commission on Friday, October 26, 1990 at 12:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

- Commissioner Aikens \_\_\_\_\_
- Commissioner Elliott \_\_\_\_\_
- Commissioner Josefiak \_\_\_\_\_
- Commissioner McDonald XXX
- Commissioner McGarry \_\_\_\_\_
- Commissioner Thomas XXX

This matter will be placed on the meeting agenda for TUESDAY, NOVEMBER 14, 1990.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3107  
Mike Pence; )  
The People for Mike Pence and Michael W. )  
Redford, as treasurer; )  
Rick Hawks; )  
Rick Hawks for Congress Committee, Inc. )  
and Larry Stoppenhagen, as treasurer; )  
Kenneth Bell; )  
Ken Bell for Congress Committee and )  
Mark N. Poovey, as treasurer; )  
Ted Blanton; )  
Blanton for Congress and Pete Teague, )  
as treasurer. )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 27, 1990, do hereby certify that the Commission took the following actions in MUR 3107:

1. Failed in a vote of 3-3 to pass a motion to:
  - a) Find reason to believe that Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer, violated 2 U.S.C. § 439a.

(continued)

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- b) Direct the Office of General Counsel to prepare appropriate Factual and Legal Analyses and circulate them for Commission approval.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

2. Failed in a vote of 3-3 to pass a motion to find reason to believe that Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rich Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer, violated 2 U.S.C. § 439a with respect to expenses incurred prior to announcement of candidacy, but paid for by campaign funds.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

(continued)

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3. Decided by a vote of 6-0 that the concept of personal use of campaign funds be referred to the Office of General Counsel for proposed rulemaking, directing the Office of General Counsel to research the relevant history with respect to this matter and submit recommendations for Commission consideration.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

4. Failed in a vote of 3-3 to pass a motion to:

- a) Find reason to believe that Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer, violated 2 U.S.C. § 439a, but take no further action.
- b) Close the file in this matter.
- c) Direct the Office of General Counsel to send appropriate letters.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

(continued)

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5. Decided by a vote of 6-0 to
- a) Close the file in MUR 3107.
  - b) Direct the Office of General Counsel to send appropriate letters.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

12-3-90  
Date

Marjorie W. Emmons  
Marjorie W. Emmons  
Secretary of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

December 7, 1990

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Richard Bates, Executive Director  
Democratic Congressional Campaign Committee  
430 South Capitol Street  
Washington, D.C. 20003

RE: MUR 3107

Dear Mr. Bates:

The Federal Election Commission has reviewed the allegations contained in your complaint dated August 8, 1990. On November 27, 1990, the Commission considered your complaint but was equally divided on whether to find reason to believe Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark N. Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer, violated the Federal Election Campaign Act of 1971, as amended ("the Act").

Accordingly, on November 27, 1990, the Commission closed the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

December 7, 1990

Jeffrey L. Turner  
Van Horne, Turner, Stuckey & McCanna  
Commercial Club Building  
112 South Cedar Street  
P.O. Box 523  
Auburn, Indiana 46706

RE: MUR 3107  
Rick Hawks and Rick Hawks for  
Congress Committee, Inc. and  
Larry Stoppenhagen, as treasurer

Dear Mr. Turner:

On August 14, 1990, the Federal Election Commission notified Rick Hawks and Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer, of a complaint alleging that Rick Hawks and Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer, had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe Rick Hawks and Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer, violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 7, 1990

Ken Bell for Congress Committee  
Mark N. Poovey, Treasurer  
P.O. Box 24894  
Winston Salem, N.C. 27104

RE: MUR 3107  
Ken Bell for Congress Committee  
and Mark N. Poovey, as treasurer

Dear Mr. Bell:

On August 14, 1990, the Federal Election Commission notified Ken Bell for Congress Committee and Mark N. Poovey, as treasurer, of a complaint alleging that Ken Bell for Congress Committee and Mark N. Poovey, as treasurer, had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe Ken Bell for Congress Committee and Mark N. Poovey, as treasurer, violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

90040315452



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

December 7, 1990

Kenneth Bell  
4204 Redwing Circle  
Winston Salem, N.C. 27106

RE: MUR 3107  
Kenneth Bell

Dear Mr. Bell:

On August 14, 1990, the Federal Election Commission notified you of a complaint alleging that you had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe you violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 7, 1990

Blanton for Congress  
Pete Teague, Treasurer  
114 1/2 West Innes Street  
Salisbury, N.C. 28145

RE: MUR 3107  
Blanton for Congress and  
Pete Teague, as treasurer

Dear Mr. Teague:

On August 14, 1990, the Federal Election Commission notified Blanton for Congress and Pete Teague, as treasurer, of a complaint alleging that Blanton for Congress and Pete Teague, as treasurer, had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe Blanton for Congress and Pete Teague, as treasurer, violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 7, 1990

CLOSED

Ted Blanton  
320 W. Thomas Street  
Salisbury, N.C. 28144

RE: MUR 3107  
Ted Blanton

Dear Mr. Blanton:


On August 14, 1990, the Federal Election Commission notified you of a complaint alleging that you had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe you violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 7, 1990

Jack L. Bailey  
Jack L. Bailey & Associates  
Library Park Office Complex  
633 Library Park Office Complex  
Post Office Box 159  
Greenwood, Indiana 46142-0159

RE: MUR 3107  
Mike Pence and The People for  
Mike Pence and Michael W.  
Redford, as treasurer

Dear Mr. Bailey:

On August 14, 1990, the Federal Election Commission notified Mike Pence and The People for Mike Pence and Michael W. Redford, as treasurer, of a complaint alleging that Mike Pence and The People for Mike Pence and Michael W. Redford, as treasurer, had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On November 27, 1990, the Commission considered the complaint but was equally divided on whether to find reason to believe Mike Pence and The People for Mike Pence and Michael W. Redford, as treasurer violated 2 U.S.C. § 439a. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

If you have any questions, please direct them to Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

Enclosures  
General Counsel's Report  
Certification

93040813456



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Mike Pence; The People for )  
 Mike Pence and Michael Redford, )  
 as treasurer; )  
 )  
 Rick Hawks; Rick Hawks for )  
 Congress Committee and Larry )  
 Stoppenhagen, as treasurer; )  
 )  
 Kenneth Bell; Ken Bell for )  
 Congress Committee and Mark )  
 N. Poovey, as treasurer; )  
 )  
 Ted Blanton; Blanton for )  
 Congress and Pete Teague, as )  
 treasurer. )

MUR 3107

STATEMENT OF REASONS

Chairman Lee Ann Elliott  
Commissioner Joan D. Aikens

On November 27, 1990 we approved the General Counsel's recommendations to find no reason to believe the above respondents violated 2 U.S.C. §439a and voted to close the file in this matter. Our votes in this matter were consistent with over 14 years of advisory precedent concerning how campaign committees may spend campaign funds.

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This case involved a complaint by the Democratic Congressional Campaign Committee against four Republican candidates alleging they had violated the "personal use restriction" at 2 U.S.C. §439a. The complaint alleged these candidates were making a "mockery" of the campaign laws and recommended they be audited and forced to make full restitution of misspent funds.

Contrary to the complainant's assertions, it is well settled that campaign committees "have wide discretion under the Act as to how campaign funds may be spent." See, e.g. AO 1980-29. As part of that discretion, the Commission has held "that so far as the Act is concerned (a candidate's) personal living expenses during the course of a campaign may be defrayed from campaign funds." AO 1980-49. See also AO 1982-64; AO 1978-5; AO 1976-53; AO 1976-17. This well-settled question was precisely the issue presented in this case and was easily answered by applying Commission precedent. <sup>1</sup>

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1. Two additional points were raised during the Commission's discussion of this case. First, there was a suggestion that we go beyond the complaint and find "reason to believe" on hypothetical pre-candidacy expenditures not alleged in this case. If the enforcement threshold of reason to believe means anything, it is that we must have some evidence or some reason to think a violation has occurred. See DSCC v. FEC, No. 90-1504 slip op. at 8-9 (D.D.C. Aug. 27, 1990). These respondents completely refuted the complaint, and we had absolutely no reason to believe other facts existed that were not complained about or should have been anticipatorily refuted. Id.

Second, there was a suggestion that the Commission's failure to cite AO 1976-53 in AO 1980-49 was a deliberate attempt to narrow the application of

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To reverse these Advisory Opinions in the context of an enforcement matter would be contrary to the precedent of this Commission and would arbitrarily inflict punishment on candidates whose behavior was taken in good faith reliance on years of Commission decisions. To capriciously single out these candidates for different treatment would be a cavalier use of our authority, contrary to years of our precedent and grossly unfair.

Although this was a settled question, we supported Commissioner Josefiak's motion to refer the scope of 2 U.S.C. §439a to the Office of General Counsel for recommendations on whether to initiate a rulemaking proceeding. It is only in the context of a rulemaking that we can fully and fairly debate the boundaries of this law. Until then, we properly answered this complaint by following the General Counsel's recommendation to enforce the rule of law as enunciated in our Advisory Opinions.

Joan D. Aikens  
Joan D. Aikens

Lee Ann Elliott  
Lee Ann Elliott

December 17, 1990

(Footnote 1 continued from previous page)  
§439a. Far from that, AO 1976-53 definitively covers today's case, and just because it was not cited in AO 1980-49 does not mean it was overruled or is not good law. Further, AO 1980-49 went on to say "that the 1979 Amendments to the Act, specifically the provisions of §439a, do not affect the result reached in Advisory Opinion 1978-5."

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

In the Matter of )  
 )  
 Mike Pence )  
 )  
 The People for Mike Pence and )  
 Michael W. Redford, as treasurer )  
 )  
 Rick Hawks )  
 )  
 Rick Hawks for Congress Committee, Inc. )  
 and Larry Stoppenhagen, as treasurer )  
 )  
 Kenneth Bell )  
 )  
 Ken Bell for Congress Committee and )  
 Mark N. Poovey, as treasurer )  
 )  
 Ted Blanton )  
 )  
 Blanton for Congress Committee and )  
 Pete Teague, as treasurer )

MUR 3107

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STATEMENT OF REASONS  
COMMISSIONER DANNY L. MCDONALD  
COMMISSIONER SCOTT E. THOMAS

In Matter Under Review ("MUR") 3107, the General Counsel's Report purported to rely on several Commission advisory opinions to allow respondents to spend campaign funds for, inter alia, payments on candidates' home mortgages, car loan obligations, parking tickets and even golf green fees without any showing in the record that the payments were made for campaign purposes. We believe that the reliance of the General Counsel's Report on those advisory opinions is fundamentally misplaced and that, in reaching such a result, the General Counsel's Report has

departed sharply from the express holding of an entire line of relevant advisory opinions. In our opinion, the plain language of the statute and prior Commission decisions indicate that there was reason to believe that the respondents in this matter violated 2 U.S.C. §439a by converting campaign funds to the candidates' personal use.

I.

On August 9, 1990, the Democratic Congressional Campaign Committee filed a complaint with the Federal Election Commission against four congressional candidates and their principal campaign committees. The complaint alleged that the respondents had "violated the FECA by using campaign funds for personal purposes in violation of 2 U.S.C. §439a." Complaint at 1. The complaint pointed out instances where each of the four campaign committees had made disbursements which appeared to be for the candidates' personal, and not campaign-related, expenses.

More specifically, the complaint stated that over the first six months of 1990, Ted Blanton used approximately \$12,000 in committee campaign funds to pay for personal living expenses. The complaint alleged that these included payments for the candidate's home mortgage, utility bill, and babysitting

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expenses. Reports filed with the Commission include the following disbursements made by the Blanton Committee in 1990: <sup>1</sup>

PAYEE	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
Ted Blanton	Living Expenses	2/17/90	\$2,418.55
Ted Blanton	Living Expenses	3/20/90	\$2,138.12
Ted Blanton	Living Expenses	4/25/90	\$2,544.59
Ted Blanton	Living Expenses	5/25/90	\$2,176.95
Ted Blanton	Living Expenses	6/22/90	\$2,384.91
Ted Blanton	Living Expenses	7/25/90	\$2,140.22
Ted Blanton	Living Expenses	8/23/90	\$2,129.35
Ted Blanton	Living Expenses	10/8/90	\$2,245.20

1. A candidate's committee must file reports with the Commission disclosing the name of each person to whom expenditures aggregating in excess of \$200 are made. In addition to identifying the payee, the Committee must also provide the date and the amount of the disbursement as well as the "purpose of the disbursement." 11 C.F.R. 104.3(b)(4); see 11 C.F.R. 104.3(b)(4)(i)(A) ("As used in 11 C.F.R. 104.3(b)(4), 'purpose' means a brief statement or description of why the disbursement was made.").

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The complaint also charged that Kenneth Bell had received "over \$2,000 in house payments and close to \$600 in payments on a personal car." Complaint at 2. Reports filed with the Commission include the following disbursements made by the Bell Committee in 1990:

PAYEE	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
First Union National Bank	Rental	[Blank] <sup>2</sup>	\$279.41
First Union National Bank	[Blank]	[Blank] <sup>3</sup>	\$279.41
First Union National Bank	Car Payment	[Blank] <sup>4</sup>	\$279.41
First Union National Bank	Car Payment	[Blank] <sup>4</sup>	\$279.41
Davidson Federal Savings	House Payment	[Blank] <sup>4</sup>	\$1,006.99
Davidson Federal Savings	House Payment	[Blank] <sup>4</sup>	\$1,006.99
First Union National Bank	Car Payment	7/2/90	\$279.41
Davidson Federal Savings	Mortgage Payment	7/13/90	\$1,006.99
First Union National Bank	Car Payment	7/30/90	\$279.41
First Union National Bank	Car Payment	9/1/90	\$279.41

Additionally, the complaint alleged that Rick Hawks had used his committee campaign funds for such personal expenses as the candidate's mortgage. The complaint also asserted that "Hawks has received two \$1,000 payments of what one newspaper called 'pocket money.'" Complaint at 2. Reports filed with the

2. From the April Quarterly Report.
3. From the Pre-Primary Report.
4. From the July Quarterly Report.

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Commission include the following disbursements made by the Hawks Committee in 1990:

PAYEE	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
Rick Hawks	Campaign Living Exp.	3/31/90	\$1,000.00
Rick Hawks	Candidate Living Exp.	4/30/90	\$1,000.00
Indiana Michigan Power	Candidate Living Exp.	5/23/90	\$93.53
City Utilities	Candidate Living Exp.	5/24/90	\$27.24
City Utilities	Candidate Living Exp.	6/14/90	\$54.24
Indiana Michigan Power	Candidate Living Exp.	6/14/90	\$84.52
Northern Indiana Public Service Co.	Candidate Living Exp.	6/14/90	\$26.43
Standard Federal	Candidate Living Exp.	6/14/90	\$597.00
Rick Hawks	Candidate Living Exp.	6/18/90	\$1,000.00
Northern Indiana Public Service Co.	Candidate Living Exp.	6/29/90	\$9.77
Standard Federal	Candidate Living Exp.	7/11/90	\$622.36
Rick Hawks	Candidate Living Exp.	7/16/90	\$1,000.00
Indiana & Michigan Electric	Candidate Living Exp.	7/24/90	\$107.28
City Utilities	Candidate Living Exp.	7/25/90	\$4.06
City Utilities	Candidate Living Exp.	8/14/90	\$32.36
Indiana & Michigan Electric	Candidate Living Exp.	8/14/90	\$138.87
Northern Indiana Public Service Co.	Candidate Living Exp.	8/14/90	\$6.52
Rick Hawks	Candidate Living Exp.	8/14/90	\$1,000.00
Standard Federal	Candidate Living Exp.	8/14/90	\$579.00
Standard Federal	Candidate Living Exp.	9/15/90	\$597.00

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Northern Indiana Public Service Co.	Candidate Living Exp.	10/6/90	\$25.81
Rick Hawks	Candidate Living Exp.	10/6/90	\$1,000.00
City Utilities	Candidate Living Exp.	10/9/90	\$51.75
Indiana & Michigan Electric	Candidate Living Exp.	10/9/90'	\$114.66
Standard Federal	Candidate Living Exp.	10/15/90	\$579.00

Finally, the complaint alleged that "Mike Pence has been charging his campaign almost \$1,000 per month to cover his home mortgage, and \$222 per month to cover his wife's car payment." Complaint at 2. In addition, the complaint stated that the candidate had used the campaign committee to pay for the cost of his groceries, parking tickets, golf greens fees, and had even paid a VISA credit card bill of nearly \$1,500. Reports filed with the Commission include the following disbursements made by the Pence Committee in 1990:

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PAYEE	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
Traffic Violations Bureau	Parking ticket	1/2/90	\$12.50
Fleet Mortgage	Mortgage	1/2/90	\$992.00
Indiana National Bank	Car Payment	1/2/90	\$222.18
VISA - Indiana National Bank	[Blank]	1/2/90	\$585.82
VISA	Personal Living Expense	2/1/90	\$791.38
Fleet Mortgage	Mortgage	2/1/90	\$992.00
Indiana National Bank	Car Payment	2/1/90	\$222.18
Fleet Mortgage	Mortgage	3/1/90	\$992.00
Indiana National Bank	Car Payment	3/1/90	\$222.18
VISA	Personal Living Expenses	3/1/90	\$688.00
Fleet Mortgage	Mortgage	4/2/90	\$992.00
Indiana National Bank	Car Payment	4/2/90	\$222.18
Fleet Mortgage	Mortgage	5/1/90	\$992.00
VISA	[Blank]	5/1/90	\$688.60
Indiana National Bank	Auto	5/1/90	\$222.18
VISA	[Blank]	6/1/90	\$883.85
Fleet Mortgage	Mortgage	6/1/90	\$992.00
Indiana National Bank	Auto Payment	6/1/90	\$222.18
Fleet Mortgage	Mortgage	7/3/90	\$986.00
Indiana National Bank	Auto	7/3/90	\$222.18
VISA	Personal Living Expenses	7/3/90	\$694.00
Hanover College	Golf Outing	7/6/90	\$30.00

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On November 14 and 27, 1990, the Commission considered the General Counsel's Report which recommended that the Commission find no reason to believe that the respondents had violated 2 U.S.C. §439a. A motion to approve the General Counsel's recommendation failed. Three Commissioners supported the General Counsel's recommendation and three Commissioners opposed the recommendation. A motion to find reason to believe that respondents violated 2 U.S.C. §439a also failed by a split vote of three to three. A motion to find reason to believe that respondents violated 2 U.S.C. §439a with respect to expenses incurred prior to the announcement of candidacy but paid for by campaign funds also failed on a three to three vote. Finally, a motion to find reason to believe but take no further action failed by a vote of three to three.

II.

As always, the analysis in every case involving the construction of a statute "must begin with the language of the statute itself." Bread Political Action Committee v. Federal Election Commission, 455 U.S. 577, 580 (1982). Section 439a, enacted as part of the Federal Election Campaign Act Amendments of 1979, 93 Stat. 1339, sets out the personal use prohibition in broad terms. In pertinent part, the provision states that no



campaign contributions "may be converted by any person to any personal use." 2 U.S.C. §439a (emphasis added).<sup>5</sup>

On its face, the language of section 439a covers the committee and candidate activity at issue in this MUR. Respondents have used campaign contributions to pay for such personal items as the mortgages on their homes, the bank loans on their cars, the electric and heating bills for their homes, a parking ticket and even golf greens fees. There is no indication that these payments were made in connection with any specific campaign activity. We believe that payments for these personal financial obligations -- most of which apparently existed well before the individual became a candidate and, in all likelihood, will continue well after the individual has terminated candidate

5. The entire text of 2 U.S.C. §439a provides:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

(emphasis added).

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status -- fall within the personal use prohibition of §439. Congress' choice of the expansive language "any personal use" plainly requires this construction. (emphasis added).

Perhaps the most troubling aspect of this case concerns those committees that have made checks out to candidates for the uncertain purpose of financing "candidate living expenses" or "living expenses." The record indicates that the Blanton Committee made payments of over \$17,000 to Ted Blanton for "living expenses," while the Hawks Committee made six payments of \$1,000 to Rick Hawks for "candidate living expenses." There is no indication that the monies were spent on any specific campaign activity. In fact, from the reports filed with the Commission, we have no idea as to how or when or for what or by whom these monies were eventually spent. In our opinion, putting campaign contributions directly into the candidate's pocket in this manner, with no meaningful disclosure of how the money was spent, suggests a pattern of converting political contributions to personal use in contravention of congressional intent.

Our conclusion is consistent with a long line of Commission advisory opinions construing the applicability of §439a. As a general proposition, these opinions recognize that "[u]nder the Act and regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election." Advisory Opinion 1988-13, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5921; see also 2 U.S.C.

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§431(9); Advisory Opinions 1987-2, 1987-1, 1985-42, 1981-2 and 1980-138 reported respectively at Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5883, 5882, 5841, 5591, and 5581. This broad discretion in making expenditures is not without limit, however, for these opinions explicitly recognize the continuing force and effect of the personal use prohibition of §439a. For example, a campaign committee may have wide latitude in making campaign expenditures for the rental of apartment space and automobiles but only so long as the expenditures are for some bona-fide campaign function or activity and not for the personal benefit of any person.

Beginning with Advisory Opinion 1980-138, considered less than a year after §439a was enacted, the Commission has distinguished those living expenses which are legitimate campaign expenditures from those which are not "for campaign purposes" or "incidental to election to federal office." In deciding what is a "campaign purpose," the Commission has not been satisfied by the simple assertion that a candidate has used an apartment or a car. Rather, the Commission has looked to whether there is some legitimate campaign activity attached to the candidate's use of the apartment (storage for campaign material or lodging of campaign staff) or the automobile (candidate transportation to and from campaign events). Absent a showing of some related campaign activity, the Commission has found that committee disbursements made for the candidate's personal living expenses are subject to the §439a prohibitions.

In Advisory Opinion 1980-138, the Commission concluded that a principal campaign committee could pay for the moving expenses of a newly-elected Senator but not the personal living expenses of the Senator and his family. The Commission stated that:

With respect to the payment of living expenses of the Senator-elect and his family (during the period between November 5, 1980 and the date he is sworn in as a United States Senator), those expenses would exist whether [the Senator] was elected to Federal office or not, and accordingly are not 'incidental' to his election to Federal office. Payment from excess campaign funds for these living expenses would therefore be a 'personal use' of such funds prohibited by the Act since the Senator-elect was not a member of Congress on January 8, 1980.

(emphasis added). See also Advisory Opinion 1981-2, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5591 ("[E]xpenses which would exist regardless of an individual's election to federal office are not 'incidental' and may not be paid from campaign funds.").

Under the rationale of Advisory Opinion 1980-138, we think that the respondents in MUR 3107 are prohibited from using campaign funds to pay for such living expenses as their home mortgages, car payments, and utility bills. Clearly, "those expenses would exist" whether the candidate was running for public office or not and accordingly are not "incidental" to the candidate's election to federal office. Advisory Opinion 1980-138 and Advisory Opinion 1981-2. We see no reason why the conclusion reached by the Commission ten years ago in Advisory Opinion 1980-138 is not just as applicable today in MUR 3107:

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"Payment from excess campaign funds for these living expenses would therefore be a 'personal use' of such funds prohibited by the Act." Id.

Similarly, in Advisory Opinion 1985-42, the Commission drew a distinction between those committee expenditures which would be "for campaign purposes" and those committee disbursements which would be for a prohibited "personal use." In that opinion, the Commission considered a request by a candidate who proposed to lease an apartment in Washington, D.C. for his "personal use." The candidate asked if campaign funds could be used to pay for a portion of the lease since the apartment would be frequently used by campaign staff.

In Advisory Opinion 1985-42, the Commission held that "[t]o the extent the use of the apartment by your campaign staff is to accomodate them on their visits to Washington for campaign purposes,...an allocable portion of the lease may be paid by your campaign committee and treated for purposes of the Act as an expenditure to influence your nomination or election." (emphasis added). The Commission warned, however, that if "the use of the apartment is provided to your campaign staff in connection with visits to Washington that are not for the purpose of conducting campaign activities, the payments made by your committee would appear to represent a use of excess campaign funds for a personal purpose. See 2 U.S.C. §439." (emphasis added).

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The Commission clearly indicated in Advisory Opinion 1985-42 that the use of an apartment or house by a candidate as a residence is insufficient by itself to convert the rent or mortgage payments for that residence into a campaign operating expenditure. Indeed, it was only when the campaign staff had used the apartment for "campaign purposes" that rental payments for the candidate's personal use of the residence could be considered a campaign operating expenditure. By contrast, in MUR 3107, there is no evidence that the candidates' residences, for which respondents made home mortgage payments, were used for any campaign purposes whatsoever. Rather, it appears that the residences were utilized solely for the candidates' personal use -- just as their homes had been used before the individual had become a federal candidate.

Similarly, in Advisory Opinion 1988-13, the Commission reviewed a request made by a candidate who sought to rent part of a duplex, which he both owned and used, to his campaign. Under the rental agreement, the campaign committee would pay 40% of the rent for use of the duplex for file storage, computer operations, telephone and work space, and the candidate would continue to pay 60% of the rent (In the past, the candidate had another tenant with whom he had shared rent). Citing with approval Advisory Opinion 1985-42, the Commission allowed the committee to pay its share of the apartment rent but warned again that "[i]f such rental payments by a candidate's campaign committee represent more than the usual and normal charge for the use of the

facilities in question, the amount in excess of the usual and normal charge would be subject to the personal use ban of 2 U.S.C. §439a." (emphasis added).

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In Advisory Opinion 1987-2, the Commission again drew the distinction between expenditures "for campaign purposes" and those committee expenses "of a personal nature." In that opinion, the Commission concluded that a campaign committee could purchase an automobile to be used by the candidate for travel to and from campaign events and events related to the candidate's "official duties and responsibilities as a Member of the House of Representatives." See 2 U.S.C. §439a. Because the Commission was not provided with the specific events for which the automobile was to be used, the Commission warned once again that "[i]f the events in question and the related travel expenses do not qualify under 2 U.S.C. §439a and Commission regulations, and are not otherwise expenditures for campaign-related travel, they would presumably be expenses of a personal nature." (emphasis added). The Commission advised that "[t]he payment of the purchase price should be reported as a campaign expenditure assuming the [candidate's] committee determines that the principal use of the vehicle will be for campaign purposes." (emphasis added).

In Advisory Opinion 1987-1, the Commission concluded that the payment of campaign funds by a principal campaign committee to a candidate for lost wages would constitute a conversion of campaign funds to personal use in violation of §439a. Once

again, the question of whether committee payments to a candidate would constitute a violation of §439a turned on whether the payments were directly related to some campaign function or activity. The Commission stated that §439a "prohibits the use of excess campaign funds by a candidate or former candidate to confer a direct or indirect financial benefit on such individual except in those situations where the financial benefit is in consideration of valuable services performed for the campaign." (emphasis added). In Advisory Opinion 1987-1, the Commission could find no evidence that the proposed payments to the candidate were "in consideration of valuable services" performed by the candidate, particularly since there was no "preexisting contract, debt or obligation that could properly be assumed by the Committee." Id.

For ten years the Commission has carefully drawn a distinction between those candidate committee expenditures made for "campaign purposes" and those disbursements made for "personal use." These opinions illustrate that the mere use of an apartment or a car by a candidate does not suddenly transform a rental payment for an apartment or a car loan payment into a legitimate campaign expenditure. Each opinion has required that in order for a campaign committee to pay for a candidate's personal living expenses, e.g., apartment rent or car payments, there must be a related campaign function or activity -- something beyond the simple use of the residence or the car by the candidate. The respondents in this matter have failed to



provide any evidence that the contested committee disbursements were made "for campaign purposes." Absent that evidence and in light of the plain language of §439a and the long line of advisory opinions interpreting that language, we conclude that there is reason to believe that the contested committee disbursements were made for the personal use of the respondent candidates in violation of 2 U.S.C. §439a.

III.

A.

Despite this body of precedent and the clear language of §439a, the General Counsel's Report contends that the disbursements at issue in this matter fall outside of the personal use prohibition. The General Counsel's Report concluded that:

The circumstances in this matter fall squarely within those addressed in previous Advisory Opinions (1980-49, 1980-29, 1978-5, 1978-2, 1977-1, 1976-64, etc...) and are controlled by the Commission's interpretation of 2 U.S.C. §439a made in those opinions. Therefore we recommend no reason to believe in this matter.

General Counsel's Report at 9-10 (footnote omitted). None of the advisory opinions relied upon by the General Counsel's Report controls the outcome of this matter. Four of the six advisory opinions cited as principal authority for the General Counsel's interpretation of §439a were decided before §439 was even enacted into law as part of the 1979 Amendments to the Act. With respect

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to the other two Advisory Opinions, we think the General Counsel's Report reads far too much into the conclusions reached by the Commission in those opinions.

The General Counsel's Report relies principally on Advisory Opinion 1980-49, 1 Fed. Elec. Camp. Guide (CCH) ¶5492. In that opinion, the Commission stated:

The Commission concludes that the 1979 Amendments to the Act, specifically the provisions of §439a, do not affect the result reached in Advisory Opinion 1978-5. The Commission has stated in several advisory opinions that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds may be spent. The Commission thus concludes that so far as the Act is concerned your personal living expenses during the course of a campaign may be defrayed from your campaign funds.

(emphasis added). Left unstated in both the text of the advisory opinion and the actual advisory opinion request is the definition of "personal living expenses." Does the phrase include mortgage and car payments or, consistent with the line of advisory opinions discussed supra, does the phrase include only those living expenses which are for a specific campaign purpose?

In order to determine the precise significance of these words, we must trace this language back to its beginnings. Advisory Opinion 1980-49 cites as its chief authority Advisory Opinion 1978-5, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5299. Unfortunately, Advisory Opinion 1978-5 also sheds no light on the

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definition of "personal living expenses." In that opinion, the Commission simply stated that "payments for [the candidate's] personal living expenses would be permissible expenditures under the Act." (emphasis added). In so finding, the Commission specifically relied on Advisory Opinion 1976-17, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5201, for the proposition that "campaign funds of a vice presidential candidate could be spent to defray living expenses incurred while she was engaged in campaign activity." (emphasis added). Since there is no further explanation or indication in either the text of Advisory Opinion 1978-5 or the advisory opinion request as to what is meant by "personal living expenses," we must turn to Advisory Opinion 1976-17.

In Advisory Opinion 1976-17, the Socialist Labor Party ("SLP") asked, inter alia, whether the principal campaign committee of its vice-presidential candidate could reimburse the candidate for subsistence expenses incurred as a SLP field worker. Prior to her nomination, the candidate was employed as a field worker by the national office of the SLP, and engaged in party-building and political education activities on behalf of the SLP in the New England states. For this she received "a daily wage plus reimbursement of travel expenses." Since her nomination, the candidate had continued her field work on behalf of the SLP. The Commission held in Advisory Opinion 1976-17 that the candidate's principal campaign committee could "reimburse her for subsistence expenses incurred as a SLP field worker."

(emphasis added). The Commission reasoned:

Generally, a candidate has discretion to determine what expenditures should be made during his or her campaign, and therefore any disbursements made and reported by the campaign committee as expenditures will be deemed to be for the purpose of influencing the candidate's election. Thus, payments from campaign funds to [the candidate] for living expenses, incurred while engaged in either campaign activities or party-building activity, would be permissible expenditures and subject to disclosure under 2 U.S.C. §434.

(emphasis added).

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It seems clear to us that Advisory Opinion 1976-17 stands only for the simple proposition that a campaign committee may pay for a candidate's "living expenses" on the road so long as they are "incurred while engaged in either campaign activities or party-building activity." There is no indication that the Commission intended to allow campaign funds to be used for living expenses not related to any campaign function or activity such as regular mortgage and car payments. Indeed, the principal campaign committee in Advisory Opinion 1976-17 only sought to pay for "subsistence expenses" such as travel reimbursement incurred by the candidate on the road as an Socialist Labor Party field worker.

The General Counsel's Report in MUR 3107 concluded that a principal campaign committee may pay for the personal living expenses of a candidate. The General Counsel's stated rationale

rests principally on Advisory Opinion 1980-49 which in turn rests on Advisory Opinion 1978-5, which in turn rests on Advisory Opinion 1976-17. See Analysis in General Counsel's Report at 7-10.<sup>6</sup> We believe that the General Counsel's Report misconceives the holdings in these opinions and, as a result, reaches a conclusion inconsistent with a straightforward reading of §439a and its subsequent advisory opinions.

B.

There are four other arguments urging a narrow reading of §439a which need to be briefly addressed. First, respondent Bell argues that a principal campaign committee may pay for a candidate's usual living expenses under Advisory Opinion 1976-53, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5203. In that opinion, the Commission found that committee expenditures for the rental of campaign office space in the candidate's home as well as payments for a "candidate's groceries, heat, mortgage, etc.," were "permissible under the Act." We note, however, that Advisory Opinion 1976-53 was issued three years before Congress even

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6. Aside from Advisory Opinion 1980-49, the only other opinion issued after the enactment of §439a and cited in the General Counsel's Report is Advisory Opinion 1980-29, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5485. In that opinion, the Commission allowed a candidate "to use [ ] campaign funds to defray the costs of participating in [a] nominating convention, specifically the costs of transportation, hotel, and meals." There is no indication that the Commission sanctioned the use of campaign funds for the candidate's home mortgage or car payments, for example, while the candidate was attending the nominating convention.

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Opinion 1976-53 was issued three years before Congress even passed §439a. As a result, the opinion has no bearing on whether similar committee payments would be permissible today under §439a.<sup>7</sup>

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Second, it is suggested that the phrase "excess campaign funds" limits application of the personal use ban to the disposition of campaign funds "leftover" after an election. We reject this weakening construction of §439 as contrary to Commission precedent. Section 439a would mean very little if, during the campaign, a candidate could spend committee funds to buy, for example, a luxury automobile as a birthday gift for the candidate's son or daughter clearly with no apparent campaign purpose in mind. Yet, under the narrow "excess campaign funds" construction, a candidate could buy such an automobile as long as the purchase was made during the campaign and not after the campaign. Understandably, the Commission has rejected this construction and specifically applied §439a to the expenditure of campaign funds during a campaign. See, e.g., Advisory Opinion 1985-42 (Expenditure of committee funds during an election year

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7. Indeed, we could find only one citation to 1976-53 in the nearly 800 advisory opinions issued since that opinion was decided in 1976. In Advisory Opinion 1983-1, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5706, the Commission cited Advisory Opinion 1976-53 for the sole proposition that "a principal campaign committee may pay rent to a candidate for campaign office space in the candidate's home." (emphasis added). There is no suggestion made in AO 1983-1 that a campaign committee could pay for a candidate's mortgage absent some campaign purpose.

for an apartment not used by campaign staff "would appear to represent a use of excess campaign funds for a personal purpose. See 2 U.S.C. §439.").

Third, some point to Commission Advisory Opinions where the Commission has found that "funds donated or paid to a candidate during a campaign that are designated specifically for the candidate's personal (and family) living expenses would be subject to the limits and prohibitions of the Act and Commission regulations." Advisory Opinion 1982-64, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5705, citing Advisory Opinion 1978-40 and 1976-70 at 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5341 and 5217, respectively.<sup>8</sup> It is argued that if payments for a candidate's living expenses are considered a contribution, then the payments for those same living expenses by a candidate's campaign committee should be considered a legitimate campaign expenditure.

We think that it is entirely plausible to treat attempts to indirectly subsidize a candidate's campaign as contributions subject to federal restrictions while at the same time barring any use of campaign funds to pay for personal expenses not related to any campaign function or activity. Congress has chosen to bar some actions even though clearly within the core

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8. The Commission provided for this loophole-closing rule because "receipt of funds for living expenses would free-up other funds of the candidate for campaign purposes, the candidate would have more time to spend on the campaign instead of pursuing his or her usual employment, and the funds would not have been donated but for the candidacy." Advisory Opinion 1982-64.

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definition of "contribution" or "expenditure" (see 2 U.S.C. §§441b, 441c, 441e, 441f, 441g), so it is hardly troublesome that Congress would choose to bar actions that would only have the most tenuous of campaign-related purposes.

Moreover, if all payments for a candidate's usual living expenses were considered to be campaign expenditures (and thus could be paid for by the candidate committee), then presumably all payments for such living expenses -- whether paid for by the candidate or the committee -- would be considered campaign expenditures reportable under the Act. See 2 U.S.C. §434(a)(1). ("Each treasurer of a political committee shall file reports of receipts and disbursements...") To our knowledge, the Commission has never required that a candidate report, for example, the candidate's home mortgage payments or car loan payments as an in-kind contribution to the candidate's committee. Yet, that is the unavoidable result if one expands the narrow, loophole-closing approach taken by the Commission and reclassifies all the usual living expenses of an individual as "campaign-related."

Finally, some have suggested that payments for a candidate's personal living expenses are campaign-related if the candidate needed such payments as inducements to become a candidate in the first place or as compensation for using personal savings to campaign. On occasion, it is argued, candidates have to quit jobs in order to spend the time required to campaign for federal office. This "somebody has to pay the bills" theory fails for

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several reasons. First, the Commission's previous advisory opinions reject this approach and only recognize as campaign-related those expenses that pertain to some campaign function or activity. Second, it would be well-nigh impossible to distinguish rationally when one candidate has a real need for use of campaign funds to make the mortgage and car payments and another candidate doesn't. Would we apply a net assets rule or net monthly income rule? What would be the statutory authority for such demarcations? Third, the "somebody must pay the bills" theory suggests that the Commission should interpret the law so as to address the personal financial plight of some candidates as compared with others. That is getting rather far afield from the congressional intent behind §439a which was to assume that all candidates would be barred from using campaign funds for personal use.

IV.

We believe that the Commission should have investigated the payments made by the respondent committees for their candidate's personal living expenses. If the respondents were able to demonstrate that the payments were made "for campaign purposes," our advisory opinions indicate that there would have been no violation of §439a. If, on the other hand, the payments were not made for any specific campaign activity but only the candidate's personal use, there would have been a violation of §439. Since respondents have failed to provide any evidence that the

contested committee disbursements were made "for campaign purposes as interpreted in Commission precedent," we voted to find reason to believe that they violated §439a.


Ironically, Congress enacted the personal use prohibition of §439 largely at the urging of the Federal Election Commission. The year before passage of §439, the Commission had unanimously approved a legislative recommendation calling on Congress to impose "some strict controls on the conversion of political funds to personal use." 1978 Annual Report at 47.<sup>9</sup> A decade later, the same Commission which sought "strict controls on the conversion of political funds to personal use" looks the other way when it appears that candidates and their committees have spent contributors' money to pay for home mortgages, car loans, parking tickets, and even amorphous "living expense" disbursements directly to the candidates. We strongly believe that Congress did not intend to allow this activity when it enacted §439a.

9. The "Summary of the [Senate Rules] Committee Working Draft-- [1979] FECA Amendments" specifically cited the Commission's legislative recommendation as its source when it summarized the draft language of what eventually became §439a. See Legislative History of Federal Election Campaign Act Amendments of 1979 (GPO 1983) at 104 and 147.


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Consistent with the language of the statute and the Commission's prior rulings in this area, we would find reason to believe that respondents converted campaign contributions to personal use and violated 2 U.S.C. §439a.

12/17/90  
Date

  
\_\_\_\_\_  
Danny Lee McDonald  
Commissioner

12/17/90  
Date

  
\_\_\_\_\_  
Scott E. Thomas  
Commissioner

90040813496

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Mike Pence )  
The People for Mike Pence and )  
Michael W. Redford, as treasurer )  
Rick Hawks )  
Rick Hawks for Congress Committee, Inc. ) MUR 3107  
and Larry Stoppenhagen, as treasurer )  
Kenneth Bell )  
Ken Bell for Congress Committee and )  
Mark N. Poovey, as treasurer )  
Ted Blanton )  
Blanton for Congress and )  
Pete Teague, as treasurer )

STATEMENT OF REASONS

Vice Chairman John Warren McGarry

I joined two of my colleagues in voting to find reason to believe that the respondents in this case violated 2 U.S.C. §439a. As set forth in great detail by Commissioners Thomas and McDonald, the respondents in this matter reported making numerous disbursements that were questionable in light of the "personal use" prohibition of section 439a. These included entries for car payments, mortgages, candidate living expenses, and the like. When such questions are raised, it is up to the candidate to demonstrate a nexus between the expense and the campaign. In my judgment, the candidates' responses to the complaint were generally inadequate. For this reason, I voted to investigate the questioned disbursements.

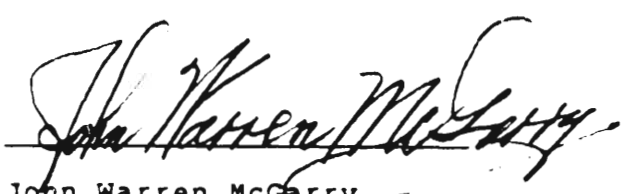
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Section 439a prohibits a candidate from converting excess campaign funds to his or her personal use both during and after a campaign. Once a campaign is over, such personal use questions should be fairly easy to resolve. During a campaign, however, personal use questions are intertwined with the general proposition that a candidate has a wide latitude to spend campaign funds as he or she sees fit. See Advisory Opinion 1980-49. In these circumstances, personal use questions can be more difficult to resolve. Given what many refer to as the "permanent campaign", the distinction between "during" and "after" tends to exist more in theory than in fact. Nonetheless, this is the general framework in which I analyze questions arising under section 439a.

In my opinion, a candidate will in most cases be able to demonstrate that the types of payments referred to above are indeed related to the campaign. Where a question arises, however, as it has here, the candidate has an obligation to set forth the nexus explicitly and unambiguously.

10403  
Date

12/17/90

  
John Warren McGarry

BEFORE THE FEDERAL ELECTION COMMISSION

Mike Pence; The People for Mike Pence )  
and Michael W. Redford, as treasurer )  
Rick Hawks; Rick Hawks for Congress )  
Committee, Inc., and )  
Larry Stoppenhagen, as treasurer ) MUR 3107  
Kenneth Bell; Ken Bell for Congress )  
Committee and Mark N. Poovey, )  
as treasurer )  
Ted Blanton; Blanton for Congress and )  
Pete Teague, as treasurer )

STATEMENT OF REASONS

Commissioner Thomas J. Josefiak

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On November 27, 1990, the Federal Election Commission voted to close the file in this matter, after deadlocking in preceding votes on motions to find the respondent candidates and their campaigns in violation of 2 U.S.C. §439a of the Federal Election Campaign Act. I joined Commissioners Aikens and Elliott in voting against finding violations of the Act under the circumstances presented in this case. I agreed with the conclusion of the FEC's General Counsel that these facts provided no grounds for finding the respondents in violation of the Act, based upon the clear and consistent interpretation of §439a set forth in the Commission's past advisory opinions.

The complaint filed by the Democratic Congressional Campaign Committee was generally based on newspaper accounts of instances in which campaign committee funds were used to pay for personal living expenses of Republican candidates actively seeking election to the U.S. House of Representatives. The question raised in this case was not whether candidates for Congress ought to be allowed to spend

campaign funds for personal expenses, or whether a line could now be drawn by the Commission that would serve as an appropriate standard under the Act for review of expenditures. The question was whether the Commission had ever drawn that line before to preclude the making of such expenditures. Any fair reading of the Commission's prior decisions on this issue makes clear that the Commission has not given these respondents, or any other candidates, fair warning of supposed limits upon the scope of "permissible" campaign expenditures under the Act, but has, in fact, expressly given its approval to the payment of a candidate's living expenses during a campaign.

1. **Commission Precedent**

In Advisory Opinion 1978-5, the requestor inquired about "the use of campaign contributions for ordinary and necessary (personal) living expenses during a campaign." The Commission concluded that "... payments for your personal living expenses would be permissible expenditures under the Act..."

In Advisory Opinion 1980-49, the requestor specifically asked whether Congress' enactment of §439a in the 1979 amendments to the FECA would affect reliance upon the Commission's decision in Advisory Opinion 1978-5. The Commission concluded:

[T]he 1979 Amendments to the Act, specifically the provisions of §439a, do not affect the result reached in Advisory Opinion 1978-5. The Commission has stated in several advisory opinions ... that candidates and their respective principal campaign committees have wide discretion under the Act as to how campaign funds are spent. The Commission thus concludes that so far as the Act is concerned your personal living expenses during the course of a campaign may be defrayed from your campaign funds. The issue of whether "excess campaign funds" may be used for the described purpose is not presented by your request and, therefore is not reached by the Commission.

The General Counsel's report accompanying his recommendation to find "no reason to believe" in this matter provided a straightforward review of the Commission's prior decisions, and noted:

In numerous Advisory Opinions, the Commission has consistently stated that because the Act places no specific restrictions upon the types of disbursements that may influence a Federal election, campaigns have wide discretion in deciding how to spend their funds ... The circumstances in this matter fall squarely within those addressed in previous Advisory Opinions (1980-49, 1980-29, 1978-5, 1978-2, 1977-1, 1976-64, etc...) and are controlled by the Commission's interpretation of 2 U.S.C. §439a made in those opinions ... [footnote:] There is no indication that the Commission had superseded their ruling in Advisory Opinion 1980-49...

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The Commission's prior decisions on this issue are directly on point, and the law was properly applied by the General Counsel in this case. Perhaps it is possible to now superimpose on these cases a revised interpretation that reconciles their facts and outcomes with a more restrictive legal analysis and a new legal standard. To now engage in retrospective reinterpretation of Commission precedent, however, is inappropriate and unfair in the context of an enforcement action (particularly when utilizing distinctions drawn in advisory opinions involving pre-campaign and post-election use of campaign funds). Respondents in this case could hardly have anticipated such a change in the Commission's direction. <sup>1</sup>

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1. Although the summary headings for the Commission's advisory opinions published in the Federal Election Campaign Financing Guide by Commerce Clearing House, Inc. ("CCH"), are not independent legal authority, it is worth noting that those seeking guidance would find the legal conclusions of Advisory Opinions 1978-5 and 1980-49 described as "Campaign funds may be used to offset a candidate's living expenses" and "Campaign funds may be used for the living expenses of the candidate," respectively.



2. Section 439a

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The Commission's conclusion in Advisory Opinion 1980-49, cited above, is particularly noteworthy in its determination that the issue of "excess campaign funds" under §439a was not presented in answering the question of whether personal living expenses of a candidate may be paid from campaign funds. I regret that the Commission has abandoned its earlier acknowledgement that §439a does not provide a backdoor method of scrutinizing candidate committee's expenditures. I have often disagreed with the legal analysis in advisory opinions that seems to suggest §439a gives the Commission authority to approve or disapprove of expenditures of Federal campaigns. See concurring opinions in Advisory Opinions 1988-13, 1986-36 and 1986-12 and a dissenting opinion in Advisory Opinion 1986-8. In our concurring opinion to Advisory Opinion 1988-13, Commissioners Aikens, Elliott and I commented:

Section 439a was not intended as a general qualification upon the "wide discretion" granted to candidates and campaigns as to their choices in spending campaign resources to influence Federal elections. Section 439a was intended to limit the use of campaign funds for purposes other than campaign expenditures, essentially outside the context of the campaign, and enumerates specific uses for "excess" campaign funds that are permissible ... The more that §439a is invoked and relied upon in reviewing ongoing campaign expenditures, the more the Commission inches toward making value judgments about the 'legitimacy' and 'appropriateness' and, ultimately, the 'legality' of expenditures ... [I]t is highly unlikely that Congress meant to bestow that type of authority upon the Commission by including in the Act a provision regarding "excess" campaign funds.

It remains my view that decisions as to the propriety of campaign expenditures are the responsibility of candidates and, ultimately, their contributors. Section 439a does not and was not intended to interfere with candidates' responsibility for and authority over

the spending of campaign funds to influence their elections. \ 2

Section 439a was meant to address the disposition of campaign funds after the election expenses are paid. The reliance upon §439a in the circumstances of this and similar cases employs blatantly circular reasoning: We now decide these campaign expenditures to be inappropriate to the conduct of your campaign; therefore, these payments must be considered to have been made from "excess campaign funds" and are subject to §439a's "personal use" limitation. This bit of illogic was created as a reverse spin on the Commission's determination that a campaign was entitled to decide it had "excess campaign funds" (and to make disbursements pursuant to §439a's limitations) anytime during the course of the election campaign. See, e.g., Advisory Opinion 1990-2.

Allowing candidates flexibility to decide during the campaign they have sufficient campaign funds to permit some to be considered "excess" may be a defensible position. From that reasonable point,

2. Not only has the Commission inappropriately relied upon §439a in examining campaign expenditures in recent opinions, it has consistently ducked any effort to honestly discuss or decide the propriety of certain expenditures by repeatedly deferring to the "grandfather clause" of §439a, by which those who were members of Congress on January 8, 1980, are permitted to use "excess campaign funds" for personal use. The Commission has thus invoked §439a's "personal use exemption" as the fallback anytime one qualifies for it. Conclusions of such opinions have relied upon the qualified allowance for "personal use" regardless of whether the expenditures in question may have been permissible without the exemption, pursuant to other allowances of §439a or simply as expenditures within the discretion of the candidate's campaign. See, e.g., Advisory Opinions 1988-13, 1986-9, 1985-22 and 1984-49. Compare Advisory Opinions 1987-2 and 1981-2. The Commission has also used §439a's "lawful purpose" allowance as a gratuitous basis for permitting legitimate and already permissible campaign expenditures. See Advisory Opinion 1986-36 and 1986-8. Compare Advisory Opinion 1981-25.

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however, comes the apparently irresistible step of the Commission deciding for candidates when expenditures during the campaign must be considered to have come from "excess" funds because such payments are viewed as outside the bounds of campaign necessity or generally inappropriate. Taking that step overturns overwhelming Commission precedent affording candidates wide discretion in deciding how to spend campaign funds to further their election to office. As my views in past advisory opinions make clear, I strongly believe the Commission must look elsewhere than §439a's limits on use of "excess campaign funds" for any legitimate legal basis to officiate the propriety of campaign expenditures. The Act and past Commission decisions grant campaigns a very strong presumption in favor of their choices for spending campaign resources; §439a does not add any further burden of proof for candidates to affirmatively justify a campaign "nexus" for expenditures made during the campaign.

### 3. Revision of the Commission's Regulations

At the conclusion of the discussion of MUR 3107, I moved to refer the issue of campaign expenditures for candidate expenses to the General Counsel's office for analysis and recommendations regarding potential revisions of our regulations (the motion passed unanimously). If it is within the Commission's jurisdiction to judge the propriety or legitimacy of candidates' campaign spending, then such authority should be found in the Act's definition of "expenditure for the purpose of influencing any election to Federal office" at 2 U.S.C. §431(9)(A), not indirectly through case-by-case expansion and misapplication of §439a's limits on use of campaign committee funds outside the context of a political campaign.

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The formal rulemaking process would be the appropriate means for remedying any deficiency in our law in this area -- not ad hoc policymaking through retroactive prosecution.

#### 4. Monitoring Campaign Expenditures

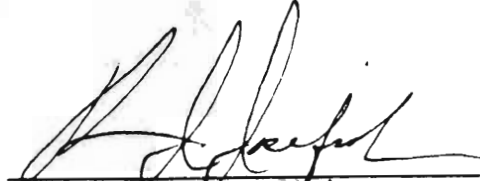
Payments from campaign funds for the personal expenses of a candidate may sometimes seem inappropriate or even "unethical" in a general, non-legal sense. Such expenditures are not impermissible under the FECA and the Commission's precedent, however, and are definitely not prohibited by §439a's limitation upon personal use of "excess campaign funds." The payment of a candidate's personal expenses during the course of a campaign may be a legitimate political issue, but it is not a legal issue under the FECA. <sup>3</sup>

The Federal Election Commission should avoid becoming the arbiter of responsible campaign expenditures. The Commission must not place itself in the position of deciding whether a political campaign has made an inordinately large purchase of bumper stickers from a printing company owned by the candidate's brother-in-law. The wisdom and propriety of campaign expenditures is generally an issue for the voters and contributors to decide. Making that informed decision possible is a primary function of the FECA's requirements for periodic reporting and public disclosure of expenditures by Federal candidates.

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3. The payment of candidates' personal living expenses by their campaigns is not necessarily bad public policy. Challenger candidates often set aside careers and forgo substantial salaries to run for office, unlike incumbent officeholders who draw taxpayer paid salaries throughout the campaign.

December 18, 1990



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Thomas J. Josefiak

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3107

DATE FILMED 12/26/90 CAMERA NO. 2

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3107.

21040313521



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CLOSED**

January 3, 1991

Richard Bates, Executive Director  
Democratic Congressional Campaign Committee  
430 South Capitol Street  
Washington, D.C. 20003

RE: MUR 3107

Dear Mr. Bates:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against Mike Pence, The People for Mike Pence and Michael W. Redford, as treasurer; Rick Hawks, Rick Hawks for Congress Committee, Inc. and Larry Stoppenhagen, as treasurer; Kenneth Bell, Ken Bell for Congress Committee and Mark Poovey, as treasurer; Ted Blanton, Blanton for Congress and Pete Teague, as treasurer. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

21040313522





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 3, 1991

Jack L. Bailey  
Jack L. Bailey & Associates  
Library Park Office Complex  
633 Library Park Office Complex  
Post Office Box 159  
Greenwood, Indiana 46142-0159

RE: MUR 3107

Dear Mr. Bailey:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

21040813523



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 3, 1991

Jeffrey L. Turner  
Van Horne, Turner, Stuckey & McCanna  
Commercial Club Building  
112 South Cedar Street  
P.O. Box 523  
Auburn, Indiana 46706

RE: MUR 3107

Dear Mr. Turner:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Nohle  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

91040313524



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 3, 1991

Ted Blanton  
320 W. Thomas Street  
Salisbury, N.C. 28144

RE: MUR 3107

Dear Mr. Blanton:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in black ink, appearing to be "L. Lerner", written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 3, 1991

Ken Bell for Congress Committee  
Mark N. Poovey, Treasurer  
P.O. Box 24894  
Winston Salem, N.C. 27104

RE: MUR 3107

Dear Mr. Bell:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in black ink, appearing to be "L. Lerner", with a long horizontal flourish extending to the right.

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 3, 1991

Blanton for Congress  
Pete Teague, Treasurer  
114 1/2 West Innes Street  
Salisbury, N.C. 28145

RE: MUR 3107

Dear Mr. Teague:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

21040313527



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 3, 1991

Kenneth Bell  
4204 Redwing Circle  
Winston Salem, N.C. 27106

RE: MUR 3107

Dear Mr. Bell:

By letter dated December 7, 1990, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against you. Enclosed with that letter was a General Counsel's Report and a copy of the Commission's Certification.

Enclosed please find statements of reasons from Commissioners Danny L. McDonald, Scott E. Thomas and John W. McGarry explaining their vote. These documents will be placed on the public record as part of the file of MUR 3107.

If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Statements of reasons

91040313528