BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Al Salvi for Senate Committee and	)	**MUR 4365**
Dana M. Grigoroff, as treasurer	)	**MUR 4534**

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 22, 1996, the Federal Election Commission ("Commission") found reason to believe that the Al Salvi for Senate Committee and Dana M. Grigoroff, as treasurer, ("Salvi Committee," "Committee," or "Respondents") violated 2 U.S.C. § 434(a)(6)(A), 2 U.S.C. § 434(b), and 11 C.F.R. § 104.3(d) of the Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA") and the Commission's regulations.

II. ANALYSIS

The FECA requires that political committees, including a candidate's authorized committees, report the total amounts of contributions received and expenditures made in the reports for the reporting periods in which they occurred. 2 U.S.C. § 434(b). Authorized committees of candidates must also report separately all contributions received from the candidate and loans made by the candidate. 2 U.S.C. §§ 434(b)(2)(B) and (G). The Act requires political committees to identify through itemization the persons or entities which have made contributions or received expenditures in the aggregate amount or value in excess of $200 within the calendar year. 2 U.S.C. § 434(b)(6)(A).

Candidates for federal office may make unlimited expenditures from personal funds, 11 C.F.R. § 110.10(a), and can make unlimited personal contributions to their campaigns either in the form of outright gifts or loans. Payments by an individual from his or her personal funds for costs incurred in providing goods or services to a committee are considered contributions to that committee. 11 C.F.R. § 116.5(b). The Act defines both "contribution" and "expenditure" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i). Further, the Commission's regulations define "anything of value" to include all in-kind contributions. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

As he was permitted to do under the FECA, Al Salvi spent a large amount of personal funds on his 1996 campaign. Respondents, however, failed to correctly report more than $1,000,000 of these personal funds, by failing to comply with provisions regulating lines of credit, in failing to report personal loans in required 48 hour notices, and in failing to report or to report correctly loans made by the candidate to his committee or to vendors.

1. Line of Credit

As one of his methods of funding his campaign, Mr. Salvi drew on a pre-existing line of credit. While the line of credit complied with the Act's requirements, the Salvi Committee failed to correctly report this draw. Besides loans made or guaranteed by the candidate, a political committee must report the receipt of all other loans. 2 U.S.C. § 434(b)(2)(H). According to 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. FECA requires the principal campaign committee of each candidate for federal office to report each person who makes a loan

to the reporting committee during the reporting period together with the identification of any endorser or guarantor of the loan, the date the loan was made, and the value of the loan. 2 U.S.C. § 434(b)(3)(E). In addition, the committee is required to report each person who receives a loan repayment from the reporting committee during the reporting period, along with the date and amount of each such loan repayment. 2 U.S.C. § 434(b)(5)(d). Pursuant to 11 C.F.R. § 101.2(a), any candidate who obtains any loan in connection with his or her campaign shall be considered as having obtained such a loan as an agent of his or her authorized committee.

Under the Act, a bank loan or a line of credit obtained by a candidate is a receipt which must be reported to the Commission in the first report following a political committee's receipt of the loan. The regulations require that along with the report, the campaign must file a Schedule C-1 containing several types of information including: the date and amount of the loan; the interest rate and rate of repayment; the type and value of collateral used to secure the loan; whether the security is perfected; and an explanation of the basis upon which the loan was made if not made on the basis of traditional collateral or other permitted sources of repayment. The Schedule C-1 must also contain certification from the lending institution stating that the terms of the loan as reported are accurate; that the lending institution was aware of the Commission's loan regulations; that the loan is made on a basis that assures repayment; and that the loan was made with no more favorable rates or terms than other loans. 11 C.F.R. § 104.3(d).

In its original 1995 Year End Report, the Committee reported that Mr. Salvi contributed $226,100 to the campaign on August 11, 1995. That contribution was reported as a loan made or guaranteed by the candidate on the report's detailed summary sheet, and as a simple receipt from the candidate on Schedule A with the notation "Other Loans." The Committee did not submit any Schedule C's at that time. In an amendment to the Year End Report filed on March 8, 1996,

the Committee reported the same $226,100 transaction as a loan from the candidate on Schedule C.

The Salvi Committee significantly revised its description of this transaction in an April 19, 1996 amendment to the Year End Report, a report filed after the March 19, 1996, Illinois primary election. On Schedule C of that report, the Committee listed a loan of $175,000 from Comerica Bank which was guaranteed by Al Salvi, and a direct loan of $50,000 from Mr. Salvi, both received on August 11, 1995. On the same Schedule C, the Committee also listed three loans of $1,318.77, $1,318.77, and $1,215.87 respectively made by Mr. Salvi on September 14, October 28, and November 24, 1995, for a total of $3,853.41. In its April 19, 1996, amendment the Committee submitted a Schedule C-1 signed by the customer service manager of Comerica Bank and the Committee treasurer, reflecting a $175,000 line of credit secured by the candidate's personal residence. The Committee also included a real estate mortgage dated February 4, 1994, which reflects $175,000 in revolving credit. At the same time, the Committee submitted a new Schedule A reflecting itemized receipts from the period totaling $228,853.41 from the candidate, including a $175,000 payment on August 11, 1995. Finally, the Committee submitted a Schedule B listing disbursements to Comerica Bank for the three interest payments totaling $3,853.41. In its response to the complaint, the Salvi Committee admitted the inaccuracy of its original report, and verified the accuracy of its amendments, as described above.

In their response to the complaint as well as their response to the reason to believe findings, Respondents contend that reporting violations associated with the line of credit drawn upon by Mr. Salvi in 1995 and its repayment all evolved from the Committee's inexperience with the FECA and the candidate's belief that once he drew on his pre-existing line of credit and

deposited those funds into his personal account that those funds constituted personal funds and should have been reported as such. According to the response to the reason to believe findings, "while in retrospect different reporting of the initial transaction would have avoided some of the subsequent issues, the reporting requirements are not, we submit, crystal clear. In any event, the line of credit transactions certainly evidence no intent to evade the reporting regulations or to mislead the voting public."

In his affidavit attached to the Committee's response to the reason to believe findings, the candidate also states that he had assets worth more than $416,000 in addition to his half share in $600,000 of equity of his home, and with such assets presumably did not have to draw on the line of credit. According to this declaration, Mr. Salvi knew he was personally responsible for repaying the line of credit and for paying interest payments on the draw. He stated: "I was conscious of the fact that the funds that I loaned the Committee came from my own account (into which the proceeds of the draw had been deposited). I, therefore, conceived of the loan as a loan from my own personal funds."

Pursuant to the Commission's regulations, loans and lines of credits are treated equivalently. 11 C.F.R. § 104.3(d) and 11 C.F.R. § 100.7(b)(11). According to the Explanation and Justification of the applicable regulations, "Lines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions." 56 Fed. Reg. 67118, 67119 (December 27, 1991). On its 1995 Year End Report and its March 9, 1996 Amendment, the Committee originally listed a $175,000 line of credit from Comerica Bank as personal funds loaned by the candidate to his campaign.

Even though the Commission has recognized that lines of credit established prior to a candidacy are, in essence, personal funds because they are "at least as accessible to the candidate as 'gifts of a personal nature which had been customarily received prior to a candidacy,'" the regulations require lines of credit to be obtained and reported in the same manner as bank loans. 2 U.S.C. § 434(b)(2)(H); 11 C.F.R. § 100.7(b)(11); and AO 1994-26. Mr. Salvi's line of credit did meet the four criteria required to have been obtained in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii) and 11 C.F.R. § 100.7(b)(11). Mr. Salvi's belief that, once he drew on a pre-existing line of credit and deposited the money in his checking account, such money became personal, does not change the fact that the transaction was incorrectly reported as the loan of personal funds. Pursuant to 11 C.F.R. § 104.3(d), the Salvi Committee was required to submit a Schedule C-1 and a copy of the line of credit agreement along with its Year End Report. Instead, for more than two and a half months, the Committee reported this transaction as a personal loan from the candidate. The Salvi Committee finally submitted the properly completed Schedule C-1 with its April 19, 1996 amendment, only then complying with 11 C.F.R. § 104.3(d), by which point the line of credit had been repaid. Accordingly, this Office recommends that the Commission find probable cause to believe that the Al Salvi for Senate Committee and Dana M. Grigoroff, as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d) for misreporting the line of credit as a personal loan and by failing to timely file a Schedule C-1 with supporting documentation.

2. 48 Hour Notices

The Act requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, or the Commission, as appropriate, and the

Secretary of State, of each contribution totaling $1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). Pursuant to 2 U.S.C. § 431(1)(A), the term "election" means a general, special, primary, or runoff election. The Act further requires notification to be made within 48 hours after the receipt of the contribution and such notification is to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

The primary election in the state of Illinois was held on March 19, 1996. Pursuant to 2 U.S.C. § 434(a)(6), the Salvi Committee was required to notify the Secretary of the Senate, in writing, of all contributions of $1,000 or more received from February 29 to March 16, 1996, within 48 hours of their receipt. A review of the Committee's Schedule C on its 1996 April Quarterly Report identified two contributions in the form of loans from the candidate of $183,737 on March 8 and $55,960 on March 15. The March 8 loan and $50,000 of the March 15 loan resulted from direct expenditures made by the candidate to purchase advertising. Because payments by an individual from his personal funds for costs incurred in providing services to a committee constitute contributions to that committee, pursuant to 11 C.F.R. § 116.5(b), a committee is required to report such payments in 48 hour notices, if made during the applicable period. See MUR 3946, MUR 3789, and AO 1992-1. While timely reporting these loans in its April Quarterly Report, the Salvi Committee admits that it did not submit 48 Hour Notices for these two contributions. In addition, according to the Salvi Committee's April 19, 1996 amended Pre-Primary Report, Mr. Salvi made another direct purchase of advertising totaling

$137,000 on February 29, 1996. The Salvi Committee failed to file a 48 Hour Notice with respect to this contribution.[1] Accordingly, this Office recommends that the Commission find probable cause to believe that the Al Salvi for Senate Committee and Dana M. Grigoroff, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

3. Late or Incorrect Reporting

The evidence also shows that several types of loans made by Al Salvi to the Salvi Committee were reported late, incorrectly, or both. These loans arose when the candidate made direct expenditures to vendors using personal funds.

The Act and regulations treat in-kind contributions the same as all other contributions and thus require committees to report them during the reporting period in which they were made. 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a) and 104.13(a). The issue of the appropriate timing for the reporting of in-kind contributions was addressed in a decision of the United States District Court for the District of Columbia. In FEC v. American Federation of State, County and Municipal Employees - P.E.O.P.L.E., Qualified, et. al., CA No. 88-3208 (RCL) (D.D.C. 1990) ("AFSCME"), AFSCME-PQ, a political committee, set up phone banks on behalf of a federal candidate and reported these in-kind contributions in the reporting period in which it disbursed

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[1] Although the Committee amended its Pre-Primary Report to include this purchase made on February 29, 1996, in fact, the purchase should have been included on a 48 hour notice and then reported in the April Quarterly Report. February 28 was the 20th day before the March 19, 1996 Illinois primary election. Pursuant to 2 U.S.C. § 434(a)(6)(A), for the Salvi Committee, the period required for 48 Hour Notices began at 12:01 a.m. on February 29, 1996, the day after the 20th day before the election. This is in contrast to the reporting period required for the pre-election report which shall be complete as of the 20th day before the election. 2 U.S.C. § 434(a)(2)(A)(i). In this case, the Salvi Committee was required to file a pre-election report complete through 11:59 p.m. on February 28, 1996.

funds to pay for the services rather than in the earlier reporting period during which the services were provided to the candidate committees.

Citing the portion of 2 U.S.C. § 434(b)(6) related to "other political committees," the court held that "in-kind contributions made by AFSCME-PQ to the McCloskey campaign in 1982 and 1984 are reportable as of the date the contributions were made, not the date of disbursements by AFSCME-PQ." The court based its ruling upon the "plain language" of 2 U.S.C. § 434(b), stating that this provision "in its entirety requires reporting of contributions in the period in which they were made." In addition, the court found that to permit delay of the reporting of in-kind contributions until after the elections by tying the reporting of such contributions to the date of payment "would emasculate the fundamental purposes of the Act." The court noted that one of the fundamental purposes of the Act included "provid[ing] the electorate with information as to where political campaign money comes from and how it is spent . . . in order to aid the voters in evaluating those [candidates]" (quoting Buckley v. Valeo, 424 U.S. 1, 66). The court stated further: "Inherent in this goal is the need to have the information available at the time voting decisions are being made."

In addition to requiring the reporting of in-kind contributions in the period in which they were made, the Act and regulations generally require simultaneous reporting of the in-kind contributions as an expenditure on the appropriate schedule (for typical in-kind contributions this is actually an artificial expenditure required in reporting in order to avoid inflating a committee's cash on hand). 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(b) and 104.13(a)(2). However, when an individual uses his or her personal funds to pay for a campaign expense and will later be reimbursed by the committee for the payment, special reporting rules apply with respect to when

the contribution is to be reported as an expenditure, (in this situation the simultaneous reporting of an artificial expenditure in order to avoid inflating a committee's cash on hand would not be appropriate since an actual expenditure occurs when the committee reimburses the payment).

Advisory Opinion 1992-1 provides guidance in this regard. In Advisory Opinion 1992-1, the candidate inquired whether, inter alia, the committee could reimburse him for campaign related expenses that he paid for with his own personal funds. The Commission responded in the affirmative, and addressed the relevant reporting requirements. The Commission explained that the committee should report advances of the candidate's personal funds for campaign related expenses only as memo entries on Schedule A, so that they do not inflate total contributions reported. The Commission further explained that in contrast to the way other in-kind contributions are reported, corresponding disbursements should not be reported until the committee subsequently reimburses the candidate. The disbursements reported should indicate the previous memo entry on Schedule A to which they relate.

These payments must be itemized if the outstanding amount advanced by the candidate, when aggregated with other contributions, exceeds $200 for the calendar year and any reimbursement by the candidate does not bring the candidate below the $200 itemization threshold before the end of the reporting period. In addition, if such reimbursement is not made in the same reporting period as the original advance, the Committee must also itemize the advance as a debt on Schedule D if it exceeds $500 or has been outstanding for more than sixty days. 11 C.F.R. §§ 104.11 and 116.5. Pursuant to 2 U.S.C. § 434(b)(8), the committee must continuously report the amount and nature of outstanding debts and obligations owed by or to such political committee. See MUR 4152 and MUR 4233, following the same approach. In each

case, campaign related expenses for which the candidate anticipated reimbursement from the committee were paid for by the candidate with personal funds.

The first group of loans which the Committee failed to timely report were advances made by the candidate to pay interest to Comerica Bank for Mr. Salvi's line of credit. In its original 1995 Year End and 1996 Pre-Primary Reports, the Committee failed to report payments of $1,318.77 on September 14, 1995; $1,318.77 on October 28, 1995; $1,215,87 on November 24, 1995; and $2,537.22 on January 26, 1996. These four payments, totaling $6,390.63, remained unreported until the Committee filed amendments to the earlier reports on April 19, 1996. The Committee admits that it failed to timely report these payments. A final interest payment of $1,025.72 on April 10, 1996 to Comerica Bank was originally reported in the 1996 July Quarterly Report as a loan by Mr. Salvi to the Committee and a disbursement paid by the Committee to the Bank.

The second category of loans incorrectly and untimely reported is the $175,000 expenditure made by Mr. Salvi on January 26, 1996, used to repay Comerica Bank for the line of credit drawn upon in August 1995. As discussed previously, the Committee originally claimed that the original transaction was the direct payment of personal funds by the candidate to his campaign. The Committee admits, however, that it failed to report the existence of the original line of credit, and the subsequent loan by the candidate, until its post-primary April 19, 1996 amendments to the 1995 Year End and 1996 Pre-Primary Reports. At that time the Salvi Committee reported Mr. Salvi had loaned the Salvi Committee $175,000 and the Committee repaid Comerica Bank. In fact, Mr. Salvi made a direct repayment to Comerica Bank to pay off the line credit, a fact which the Committee failed to disclose until August of 1996.

The final category of loans which the Committee failed to report correctly arises from six direct expenditures made by the candidate to purchase advertising from the firm of Brabender Cox for which the candidate seeks reimbursement from the Committee. The Salvi Committee admits that it failed to timely report two payments made by Mr. Salvi to Brabender Cox to purchase media time, $53,000 on February 23 and $137,000 on February 29, 1996, the latter which should also have been reported in a 48 Hour report. The Committee failed to include the February 23 transaction in its original 1996 Pre-Primary Report and the February 29 transaction in its April Quarterly Report. In its April 19, 1996 amended Pre-Primary Report, filed after the primary, the Committee reported the receipt of both sums of money from Mr. Salvi on Schedule A, the loan of this money from Mr. Salvi on Schedule C, and the disbursement of this money to the advertising firm on Schedule B. The Committee, however, failed to report that Mr. Salvi had made direct payments to the advertising firm for these media purchases.

The Committee has also admitted that the candidate made direct expenditures of $226,192 and $137,990 to purchase media time from the same agency on January 30 and February 1, 1996. In its original 1996 Pre-Primary Report, the Committee reported these transactions as receipts from the candidate on Schedule A, as loans from the candidate on Schedule C, and as disbursements to the advertising agency on Schedule B. The disbursements do contain the notation "(Paid for by candidate)." When listing these transactions on its Schedule C in the April 19, 1996 amendment to the Pre-Primary Report, the Committee deleted the notation "paid for by candidate," but continued to misreport these expenditures.

The Salvi Committee further admits that the two payments by Mr. Salvi which should have been disclosed in 48 Hour Notices, $183,737 on March 8 and $50,000 of a $55,960

payment on March 15, also financed direct expenditures for advertising. In its 1996 April Quarterly Report, however, the Committee reported these transactions as receipts from the candidate on Schedule A, as loans from the candidate on Schedule C, and as disbursements to the same advertising firm on Schedule B, but not as direct payments from Mr. Salvi to the advertising firm.[2]

The Salvi Committee failed to report that Mr. Salvi had made direct payments to Brabender Cox for advertising, and direct payments to Comerica Bank for interest payments and to repay the line of credit until the Committee filed amendments to its reports on August 29, 1996. Now, all direct payments by Mr. Salvi to vendors are reported as memo entries described as "advertising," "interest payment," and "loan payment" on Schedule A and as part of the debt owed to the candidate on Schedule D.

In responding to the Commission's reason to believe finding that the Salvi Committee had incorrectly reported a series of direct payments made by Mr. Salvi to vendors for which he ultimately wished to be reimbursed by the Committee, Respondents contend that the Commission's view on such payments is incorrect. Respondents believe that such disbursements of the candidate's personal funds should be classified as loans instead of advances, because the candidate treated these payments as loans and intended for the funds to be accounted for as loans instead of advances. Respondents claim that nothing in the FECA or the Commission's regulations requires special reporting of direct candidate payments as advances instead of loans; rather, the Commission adopted this practice after the Salvi Committee had already reported in

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[2] Even though the Commission's Reports Analysis Division had informed the Salvi Committee that its method of reporting candidate expenditures appeared incorrect in two requests for additional information mailed out on April 9 and June 25, 1996, the Committee failed to correct these errors until August 29, 1996.

this manner.[3] The Salvi Committee noted that failing to include the candidate's payment as a disbursement to the vendor instead of an obligation to the candidate actually reduces the amount of information available to the public and is contrary to the Act's goal of fostering public disclosure.

The critical issue relating to these types of transactions is whether a particular payment was an in-kind contribution to the Salvi Committee, represented by a direct payment from the candidate to a third party vendor, for which the candidate seeks eventual repayment from the Committee. It is immaterial that the candidate may have intended these contributions to be in the form of loans instead of advances. Regardless of the candidate's intent to classify the transaction as a loan or an advance, the candidate is still required to follow the rules at 11 C.F.R. § 116.5. Although Respondents contend that this procedure results in less information being placed on the public record, this assessment is not correct. In fact, Respondents initially reported contributions from the candidate and disbursements to the third party vendor, but did not report a connection between the two. Using the procedures required by 11 C.F.R. § 116.5 and including detailed memo entries to report the payments to third party vendors results in the most complete and accurate reporting of this type of transaction. Accordingly, based on this information, the Salvi Committee untimely reported certain loans made by the candidate and reported incorrectly

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[3] Besides appearing in the regulations, the Salvi Committee would also have received specific notice that this reporting requirement specifically applies to candidates when it received copies of the 1993 and 1995 Campaign Guides for Congressional Candidates and Committees. Both guides state that "when a volunteer, a committee staff member or the candidate uses his or her personal funds or personal credit to pay a vendor for a campaign expense and is later reimbursed by the committee, special reporting rules apply." 1993 Guide at 6 and 28. 1995 Guide at 6 and 29. The guides then describe those reporting provisions.

expenditures directly paid for by the candidate, all of which are additional violations of 2 U.S.C. § 434(b).

III. RECOMMENDATION

Find probable cause to believe that Al Salvi for Senate Committee and Dana M. Grigoroff, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), 2 U.S.C. § 434(b), and 11 C.F.R. § 104.3(d).

4/18/97
Date

Lawrence M. Noble
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