



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3697

DATE FILMED 4/21/93 CAMERA NO. 2

CAMERAMAN E.E.S.

93740934897

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: October 14, 1992

ANALYST: Robin Kelly

I. COMMITTEE: The Committee to Elect Don Nelms
(C00263699)
Roy J. Shorter, Treasurer
4000 Frontage Road
Fayetteville, AR 72703

II. RELEVANT STATUTE: 2 U.S.C. §434(a)(6)
11 CFR §104.5(f)

III. BACKGROUND:

Failure to File Forty-Eight Hour Notifications

The Committee to Elect Don Nelms ("the Committee") failed to file the required Forty-Eight (48) Hour Notifications ("48-Hour Notices") for two (2) contributions/loans totalling \$25,000 received prior to the 1992 Primary Election.

The candidate was involved in the 1992 Primary Election held on May 26, 1992. Prior Notice was sent to the Committee on April 20, 1992 (Attachment 2). The Notice includes a section titled "48-Hour Notice on Contributions". This section reads "Notices are required if the committee receives contributions (including contributions and loans from the candidate's personal funds; and endorsements or guarantees of bank loans) of \$1,000 or more, during the period of May 7 through May 23. The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s)."

Schedules A and C of the 12 Day Pre-Runoff Report indicate that the Committee failed to file two (2) 48-Hour Notices for contributions received during the aforementioned period (Attachment 3). The following is a list of the contributions for which no 48-Hour Notices were filed:

<u>Contributor Name</u>	<u>Date</u>	<u>Amount</u>
Don Nelms	05/07/92	\$10,000
Don Nelms	05/15/92	\$15,000

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On September 11, 1992, an Informational Notice ("IN") was sent to the Committee (Attachment 4). The IN notes that the Committee may have failed to file one or more of the required 48-Hour Notices for "last minute" contributions of \$1,000 or more. The notice requests the Committee to review their procedures for checking contributions received during the aforementioned time period. In addition, the notice states that although the Commission may take legal steps, any response would be taken into consideration.

On September 17, 1992, Roy Shorter called and asked the Reports Analysis Division ("RAD") analyst how to respond to the notice he had received (Attachment 5). He said he didn't realize before the Primary that loans were considered contributions. The analyst told him to write a letter explaining the situation.

On September 21, 1992, the treasurer, Roy Shorter, responded in a letter (Attachment 6). He stated that at the time of filing he didn't realize that loans made by the candidate were considered contributions and subject to the 48-hour special notice filing. Mr. Shorter also points out that the Campaign Guide for Congressional Candidates (July 1988) Page 24, does not define a "last minute" contribution to include loans from the candidate's personal funds. He said it was not until he received a copy of "recurring problems" letter, on or about June 1st (addressed to the candidate from Joan D. Aikens, Chairman) that he realized the 48-hour reporting rule included candidate loans. Thereafter he stated that he has promptly reported all "last minute" contributions.

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FEDERAL ELECTION COMMISSION
1991-1992
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

ATTACHMENT #1 DATE 14OCT92

PAGE 1

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
			PRIMARY	GENERAL	PRIMARY	GENERAL			
NELMS, DON		HOUSE 03 DEMOCRATIC PARTY			ARKANSAS		1992 ELECTION	ID# H2AR03085	
1. STATEMENT OF CANDIDATE							30MAR92	1	92HSE/444/2733
1992 STATEMENT OF CANDIDATE									
2. PRINCIPAL CAMPAIGN COMMITTEE									
COMMITTEE TO ELECT DON NELMS								ID #C00263699	HOUSE
1992 STATEMENT OF ORGANIZATION							27MAR92	1	92HSE/444/2416
STATEMENT OF ORGANIZATION - AMENDMENT							1MAY92	1	92HSE/450/4545
STATEMENT OF ORGANIZATION - AMENDMENT							9MAY92	1	92HSE/451/1146
48 HOUR CONTRIBUTION NOTICE							5JUN92	1	92HSE/453/3830
48 HOUR CONTRIBUTION NOTICE							5JUN92	1	92HSE/453/3829
48 HOUR CONTRIBUTION NOTICE							6JUN92	1	92HSE/453/4195
APRIL QUARTERLY			41,376		39,064		10MAR92 - 31MAR92	10	92HSE/449/3439
PRE-PRIMARY			69,511		68,758		1APR92 - 6MAY92	9	92HSE/451/1065
PRE-RUN-OFF			26,629		23,848		7MAY92 - 20MAY92	11	92HSE/453/2216
PRE-RUN-OFF - AMENDMENT			-		-		7MAY92 - 20MAY92	1	92HSE/467/2990
PRE-RUN-OFF - AMENDMENT			-		-		7MAY92 - 20MAY92	1	92HSE/467/3145
PRE-RUN-OFF - AMENDMENT			-		-		7MAY92 - 20MAY92	1	92HSE/467/4740
1 ST LETTER INFORMATIONAL NOTICE							7MAY92 - 20MAY92	1	92FEC/778/2120
JULY QUARTERLY			87,236		91,130		21MAY92 - 30JUN92	17	92HSE/459/1311
TOTAL			224,752	0	222,800	0		57	TOTAL PAGES
3. AUTHORIZED COMMITTEES									
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN									

-All Reports have been reviewed.

-Cash-On-Hand as of 6/30/92 - \$1,952

-Debts owed by the Committee as of 6/30/92 - \$210,104

Debts owed to the Committee as of 6/30/92 - \$0

REPORT NOTICE

FEDERAL ELECTION COMMISSION

ARKANSAS
Congressional Committees

April 20, 1992

FOR COMMITTEES INVOLVED ONLY IN THE PRIMARY (05/26):

REPORT	REPORTING PERIOD	REG./CERT. MAILING DATE*	FILING DATE
Pre-Primary	04/01/92 - 05/06/92**	05/11/92	05/14/92
48 Hour Notices	----See Below----		
July Quarterly	05/07/92 - 06/30/92	07/15/92	07/15/92

WHO MUST FILE

Principal campaign committees of congressional candidates (including unopposed candidates) who seek nomination in the primary must file the above reports and notices. If the campaign has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 35.

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions (including contributions and loans from the candidate's personal funds; and endorsements or guarantees of bank loans) of \$1,000 or more, during the period of May 7 through May 23. The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s).

LABEL

Affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

COMPLIANCE

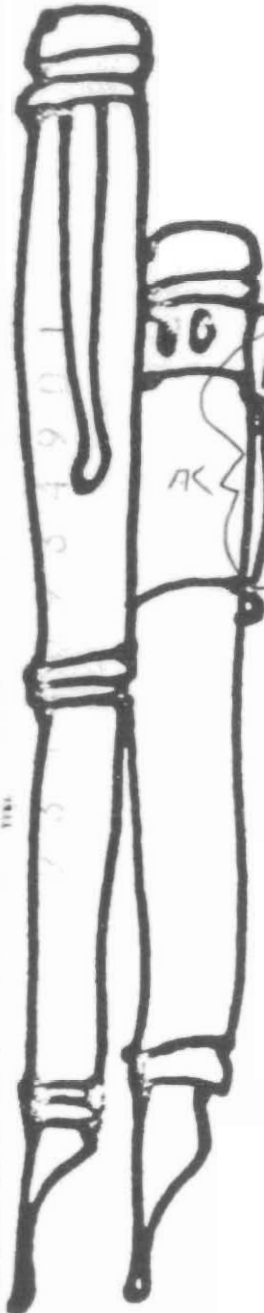
TREASURERS ARE RESPONSIBLE FOR FILING ALL REPORTS AND 48 HOUR NOTICES ON TIME. FAILURE TO DO SO IS SUBJECT TO ENFORCEMENT ACTION. COMMITTEES USING NON-FEC FORMS FOR REPORTS OR FILING ILLEGIBLE REPORTS OR NOTICES WILL BE REQUIRED TO REFILE.

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

FOR INFORMATION, Call: 800/424-9530 or 202/219-3420

SEE OPPOSITE SIDE FOR RUNOFF INFORMATION



**ARKANSAS
RUNOFF**

FOR COMMITTEES INVOLVED IN BOTH THE PRIMARY (05/26) AND RUNOFF
(06/09):

REPORT	REPORTING PERIOD	REG./CERT. MAILING DATE*	FILING DATE
Pre-Primary 48 Hour Notices	04/01/92 - 05/06/92** ----See Below----	05/11/92	05/14/92
Pre-Runoff 48 Hour Notices	05/07/92 - 05/20/92 ----See Below----	05/28/92***	05/28/92
July Quarterly	05/21/92 - 06/30/92	07/15/92	07/15/92

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions (including contributions and loans from the candidate's personal funds; and endorsements or guarantees of bank loans) of \$1,000 or more, during the period:

Primary 5/07 - 5/23
Runoff 5/21 - 6/06

The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s).

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

***The mailing date is the same as the filing date because the computed mailing date would fall one day before the primary was held.

FOR INFORMATION, Call: 800/424-9530 or 202/219-3420

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SCHEDULE A

ITEMIZED RECEIPTS

Use separate schedules for each category of the Detailed Summary Page
PAGE 1 OF 1
FOR LINE NUMBER 13 (A)

THIS PAGE IS GUARANTEED BY THE CANDIDATE

Any information supplied from such Reports and Statements may not be sold or used by any person for the purpose of collecting contributions or for commercial purposes other than using the name and address of any political committee to solicit contributions from such committees.

NAME OF COMMITTEE (in Full)

THE COMMITTEE TO ELECT DON NELMS

000263699

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
DON NELMS 2933 S. COLLEGE DRIVE FAYETTEVILLE, AR 72701	NELMS MOTORS INC. NELMS CHEVROLET INC. NW ARKANSAS MOTORS INC.	5/7/92 5/15/92	\$ 10,000.00 \$ 15,000.00
Receipt For: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation PRESIDENT - CEO	Aggregate Year-to-Date > \$ 127,500.00	
B. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
C. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
D. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
E. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
F. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	
G. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation	Aggregate Year-to-Date > \$	

SUBTOTAL of Receipts This Page (optional)	\$ 25,000.00
TOTAL This Period (last page this line number only)	\$ 25,000.00

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SC-804LE C

(Revised 2/80)

LOANS

LOANS FROM CANDIDATE'S PERSONAL FUNDS

Page 2 of 2
 Line Number
 See separate schedule
 for each numbered line

Name of Committee (or Full)
THE COMMITTEE TO ELECT DON HELMS C00263699

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period
DON HELMS 2933 N. COLLEGE DRIVE F. LITTLEVILLE AR 72701	\$25,000.00	0.	\$25,000.00

Origin: Primary General Other (Specify):

Terms: Date Incurred 5/7/92 Date Due THRU 5/20/92 Interest Rate 0.00% Simple Stated

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer
*FROM PERSONAL FUNDS	
Occupation	
Amount Guaranteed Outstanding	
2. Full Name, Mailing Address and ZIP Code	Name of Employer
Occupation	
Amount Guaranteed Outstanding	
3. Full Name, Mailing Address and ZIP Code	Name of Employer
Occupation	
Amount Guaranteed Outstanding	

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payments To Date	Balance Outstanding at Close of This Period

Origin: Primary General Other (Specify):

Terms: Date Incurred _____ Date Due _____ Interest Rate _____ Simple Stated

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer
Occupation	
Amount Guaranteed Outstanding	
2. Full Name, Mailing Address and ZIP Code	Name of Employer
Occupation	
Amount Guaranteed Outstanding	
3. Full Name, Mailing Address and ZIP Code	Name of Employer
Occupation	
Amount Guaranteed Outstanding	

SUBTOTALS This Period This Page (optional)	\$ 25,000.00
TOTALS This Period (last page in this file only)	\$127,500.00

Carry over/ending balance only to LINE 2, Schedule B, for this line. If no Schedule B, carry forward to appropriate line of Summary.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20541

RQ-5

Roy J. Shorter, Treasurer
Committee to Elect Don Nelsa
4000 Frontage Road
Fayetteville, AR 72703

SEP 11 1992

Identification Number: C00263699

Reference: 12 Day Pre-Runoff Report (5/7/92-5/20/92)

Dear Mr. Shorter:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule A of your report indicates that your committee may have failed to file one or more of the required 48 hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-Primary report. A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. Although the Commission may take legal action, any response you wish to make concerning this matter will be taken into consideration. (11 CFR §104.5(f))

Any amendment or clarification should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 219-3580.

Sincerely,

Robin Kelly
Reports Analyst
Reports Analysis Division

92 J 1782120

MEMORANDUM TO FILES:

DATE 9/17/92

TELECON X
VISIT

NAME OF COMMITTEE: Committee to Elect Don Nelms - C00263699

SUBJECT: Failure to File Required 48-Hour Notices

FEC REP: Robin Kelly, RAD Analyst

COMMITTEE REP: Roy Shorter, Treasurer (501) 521-3813

Mr. Shorter called to discuss the notice he had received regarding the 48-Hour Notices. He said he realized that he had missed reporting two, but only after the fact. He said he would send in a letter explaining the situation.

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REGULAR MAIL

SEP 17 1992

DONNELMS

September 17, 1992

Robin Kelly, Reports Analyst
Federal Election Commission
999 E Street NW
Washington DC 20463

146072

Dear Ms. Kelly:

This letter follows up our telephone conversation earlier this morning regarding your review of our "last minute" contributions reported on the 12 Day Pre-Runoff Report (5/7/92-5/20/92) filed on or before 5/28/92.

At the time of filing, I was not aware that loans in excess of \$1,000 (made by the candidate from personal funds) were also considered to be contributions subject to the 48-hour special notice filing requirement.

The Campaign Guide for Congressional Candidates (July 1988), on page 24, does not define a "last minute" contribution to include loans from the candidate's personal funds. In addition, when the loans are reported on Schedule A Itemized Receipts (FEC Form 3), as denoted in the example on page 40, they are reported as "Loans" Made or Guaranteed by the Candidate, not "Contributions".

It was not until I received a copy of the "recurring problems" letter, on or about June 1st (addressed to the candidate, undated-copy enclosed) from Joan B. Aikens, Chairman, that I realized the 48-hour reporting rule included candidate loans.

Promptly, thereafter, I have reported all subsequent "last minute" contributions (including candidate loans from personal funds) within 48-hours of receipt by special notice. These receipts were also reflected on the July 15 Quarterly Report (5/21/92-6/30/92).

If you have any questions regarding this matter, please do not hesitate to contact me at: The Committee to Elect Don Nelms, 4000 Frontage Rd, Fayetteville, AR 72703, or call me at (501) 521-3819. Thank you for your consideration.

Respectfully,

Roy J. Shorter, Treasurer
The Committee to Elect Don Nelms
ID Number: C00263689

OFFICE OF THE CLERK
FEDERAL ELECTION COMMISSION
NOV 22 1992

RECEIVED
FEDERAL ELECTION COMMISSION
MAY 19 1992

SEP 21 9 19 AM '92

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DEMOCRAT ★ US CONGRESS ★ 3RD DISTRICT

The Committee to Elect Don Nelms • Don Nelms, Chairman • 17 1/2 East Center • Fayetteville, Arkansas 72701

RECEIVED
F.E.C.
SECRETARIAT

92 OCT 30 PM 2: 54

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD Referral # 92L-24
STAFF MEMBER: Holly Baker

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: The Committee to Elect Don Nelms and
Roy J. Shorter, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(6)
2 U.S.C. § 431(8)(A)

I. GENERATION OF MATTER

The Office of the General Counsel received a referral from the Reports Analysis Division ("RAD") on October 14, 1991. Attachment 1. The basis for the attached referral is the failure of The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer ("Committee") to file two forty-eight hour notifications ("48 Hour Notices") for contributions totaling \$25,000. Don Nelms lost the 1992 Primary Election Runoff in the 3rd Congressional District in the State of Arkansas with 42 percent of the vote.

II. FACTUAL AND LEGAL ANALYSIS

Based on the Factual and Legal Analysis, see Attachment 2, this Office recommends the Commission find reason to believe the Respondents violated 2 U.S.C. § 434(a)(6).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

The Office of the General Counsel recommends that the Commission find reason to believe that the Committee violated

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2 U.S.C. § 434(a)(6). In addition, this Office recommends that the Commission offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe.

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer, violated 2 U.S.C. § 434(a)(6), and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis, proposed conciliation agreement and the appropriate letter.

Lawrence M. Noble
General Counsel

10-30-92
Date

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Referral Materials
2. Factual and Legal Analysis
3. Proposed Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
The Committee to Elect Don Nelms) RAD Referral #92L-24
and Roy J. Shorter, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 5, 1992, the Commission decided by a vote of 5-0 to take the following actions in RAD Referral #92L-24:

1. Open a MUR.
2. Find reason to believe that The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer, violated 2 U.S.C. § 434(a)(6), and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the Factual and Legal Analysis, proposed conciliation agreement and the appropriate letter, as recommended in the General Counsel's Report dated October 30, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry and Potter voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

11-6-92
Date

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

Received in the Secretariat:	Fri.,	Oct. 30, 1992	2:54 p.m.
Circulated to the Commission:	Mon.,	Nov. 2, 1992	11:00 a.m.
Deadline for vote:	Thurs.,	Nov. 5, 1992	4:00 p.m.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20463

November 12, 1992

Roy J. Shorter, Treasurer
The Committee to Elect Don Nelms
4000 Frontage Road
Fayetteville, AR 72703

RE: MUR 3697
The Committee to Elect Don Nelms
and Roy J. Shorter, as treasurer

Dear Mr. Shorter:

On November 5, 1992, the Federal Election Commission found that there is reason to believe that The Committee to Elect Don Nelms ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

23040934911

Roy J. Shorter
page 2

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Holly Baker, the staff member assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

23040934912

FEDERAL ELECTION COMMISSION
FACTUAL & LEGAL ANALYSIS

MUR 3697

RESPONDENTS: The Committee to Elect Don Nelms
and Roy J. Shorter, as treasurer

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

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The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives 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). The Act further requires notification to be made within 48 hours after the receipt of the contribution and 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. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

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. Furthermore, each guarantor or endorser of a loan shall be deemed to have contributed that portion of the total amount of the loan for which the guarantor or endorser agreed to be liable until the loan is repaid. 2 U.S.C.

§ 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C).

The Primary Election in the state of Arkansas was held on May 26, 1992. Pursuant to the Act, the Respondents were required to notify the Commission, in writing, of all contributions of \$1,000 or more received from May 7 to May 23, 1992, within 48 hours of their receipt. A review of the Committee's 1992 12 Day Pre-Runoff Report identified two contributions received on May 7 and May 15, 1992, of \$1,000 or more (in the form of loans from the candidate) totaling \$25,000. The contributions were reported on Schedules A and C, with the candidate, Don Nelms, listed as making a \$10,000 loan and a \$15,000 loan to the Committee. The Committee did not submit two 48 Hour Notices for these contributions.

Therefore, there is reason to believe that The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer, violated 2 U.S.C. § 434(a)(6) by failing to report campaign contributions of \$1,000 or more, received after the 20th day, but more than 48 hours before the primary election, within 48 hours of receipt of the contributions.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20561

December 10, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roy J. Shorter, Treasurer
The Committee to Elect Don Nelms
4000 Frontage Road
Fayetteville, AR 72703

RE: MUR 3697
Cmte to Elect Don Nelms

Dear Mr. Shorter:

On November 12, 1992, you were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact me at (202) 219-3400.

Sincerely,

Holly Baker
Attorney

93040934915

THE COMMITTEE TO ELECT DON NELMS
4000 Frontage Road
Fayetteville, Arkansas 72703

11 21 0 57 11

December 16, 1992

Holly Baker, Attorney
General Counsel's Office
Federal Election Commission
999 E Street NW
Washington, DC 20463

NR 3697

121 123

Dear Ms. Baker:

I respectfully request that no action be taken against the Committee or myself, as treasurer, as there was no willful neglect on the part of the committee or myself. At all times, we made an honest attempt to comply with all reporting and special notice requirements, and with this one exception, compliance was full and complete.

The issue appears to center upon the confusion over definitional terms of a candidate "loan" versus a candidate "contribution" as it relates to the 48-hour notice requirement. For FEC quarterly and pre-election reporting purposes, a "candidate loan" is distinguished from a "candidate contribution" and must be reported separately. However, for 48-hour special notice reporting purposes, a "candidate loan" is not distinguished from a "candidate contribution" and reported the same. This created the problem with our reporting the first two candidate loans.

None of those assisting the candidate in the financial reporting had previous experience in that function, including myself. Our entire knowledge of the requirements came from a detailed review of the FEC materials furnished us and selected conversations with FEC. We fully understand the importance of proper campaign reporting and certainly appreciate the complexity of federal campaign law and regulations. However, an honest mistake was made and once the definition of a candidate contribution was clarified to include a candidate loan, the mistake was immediately corrected. All subsequent candidate loans were reported promptly and correctly.

Attached is an affidavit, under oath, setting out those facts which I believe should be considered by you, and which I believe support our position that the Commission should take no action against our Committee or myself.

In the event the affidavit and this letter are not sufficient to satisfy your inquiry into our actions, and satisfy you as to our good intentions, we would like to remain in contact for further discussion. Should you need additional information, please contact me at (501) 521-3813.

Respectfully,



Roy J. Shorter, Treasurer
The Committee to Elect Don Nelms

- Enclosures: 1) Reporting Problems Letter from Joan Aikens, undated
2) 12-Day Pre-Election Report Letter from Clerk of US House of Representatives, dated 5/5/92
3) Letter from our Committee to Robin Kelly, dated 9/17/92

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AFFIDAVIT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

I, Roy J. Shorter, the undersigned, under oath, do of my own personal knowledge make the following statements and declare them to be true.

1. I first became aware of the Federal Election Commission's pre-probable cause letter (dated November 12, 1992) together with enclosures, and your certified letter dated December 10, 1992, December 14, 1992. Although appropriately addressed, our campaign office has effectively closed. The normal business office of our chairman accumulates the mail and notifies me when I should come and pick it up. I was not contacted until December 14, 1992 that mail had accumulated. Upon retrieving the mail your correspondence was read. At that time I promptly called Ms. Holly Baker with the General Counsel, FEC.

2. At the time of the two candidate loans in question, my only source of guidance for the 48-hour notice reporting requirement was your Campaign Guide (July 1988), page 24, "Last-Minute Contributions", which did not specify that "candidate loans" are also included under that requirement. The heading of the section does not mention "Candidate Loans", nor is it mentioned in the body of the requirement. There was simply nothing to place me on notice that "Candidate Loans" might be included.

3. In reading the Campaign Guide, I was aware that candidate loans were treated differently than contributions for reporting purposes and that a loan was in fact distinguished from a contribution. Page 11 states that "personal funds loaned to the campaign are reported as loans from the candidate from the outset", and "personal funds donated to the campaign are reported as contributions from the candidate." Examples on page 40 indicate that loans made by the candidate are to be reported under itemized receipts as "Loans Made by the Candidate" and contributions from the candidate are reported under itemized receipts as "Contributions from the Candidate".

4. At that time, I understood that once a candidate loan was designated as a "loan", subject to repayment to the candidate, it would not be considered a contribution, unless the candidate specifically forgave the debt. Then, and only at the time of forgiveness of the debt, would the loan be converted to a contribution, and reported as such. To this day, all loans previously reported are still subject to repayment and are shown on the books as a debt owed the candidate by the Committee.

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5. In my efforts to properly comply with all reporting requirements, I contacted an FEC specialist in March, 1992, to determine proper reporting procedures for out-of-pocket expenses paid by the Candidate. Following that conversation, I understood that out-of-pocket expenses were deemed in-kind contributions from the candidate and were not to be reported as loans, and that any candidate contributions could not be converted to a loan at a later date. At no time during this conversation was I advised of the inclusion of "Candidate Loans" for the purpose of the 48 hour requirement.

6. In addition, at the time of the first two candidate loans subject to 48-hour notice, which are in question, I also had received two letters from the Office of the Clerk, US House of Representatives:

- A) letter undated, regarding April 15, 1992 quarterly reporting and,
- B) letter dated May 5, 1992, regarding 12-day pre-election reporting.

The second letter addressed the issue of the 48-hour notice, but only referred to "contributions", similar to that in the Campaign Guide (July 1988) on page 24. A copy of that letter is attached, marked Exhibit 1.

7. My first notice of the similar treatment of candidate loans and contributions for the 48 hour rule was upon my receipt of an undated letter (addressed to the candidate) from Joan Aikens, addressing reporting problems. A copy of that letter is attached, marked Exhibit 2.

8. Thereafter, all candidate loans of \$1,000 or more, falling within the 20 day period prior to the election, were promptly reported. A candidate loan on June 3 was reported June 4 and a candidate loan on June 4 was reported June 5.

9. I subsequently received a copy of your quarterly Report Notice dated June 19, 1992, which also clarified last minute contributions to include loans from the candidate's personal funds.

10. I have filed all required FEC Quarterly and Pre-Election Reports timely and accurately and properly separated candidate loans from candidate contributions, as required on FEC Form 3, page two, and Schedules A and C.

11. I explained to Robin Kelly of the Commission on September 17, 1992, by letter, that I was not aware that "candidate loans made from personal funds" were also considered "contributions" for the 48 hour reporting rule, further advising her that the Joan Aikens letter was my first knowledge of this inclusion. A copy of

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that letter is attached, marked Exhibit 3.

12. I have not previously served as treasurer, nor been associated in any position, with political campaigns until I accepted this position with the Committee to Elect Don Nelms. This was also the first political office sought by the candidate and therefore his first experience with the campaign process. With the exception of the first two 48 hour notices now in question, all subsequent 48 hour notices were timely filed and all other reporting requirements set forth by the FEC were timely and completely met.

Further the affiant sayeth not. Dated this 16 day of December, 1992.



Roy J. Shorter

WITNESS my hand and seal as notary public on the day above written.



Notary Public


My Commission Expires: 7-1-95

23940934919

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

May 5, 1992

TO: Individuals Seeking Election to the U.S. House of Representatives and Political Committees Supporting Such Individuals Involved in the Primary Election to be Held on May 26, 1992, in Arkansas, Idaho and Kentucky

FROM: DONNALD K. ANDERSON, Clerk 
U.S. House of Representatives

SUBJECT: 12-Day Pre-Election Report of Receipts and Disbursements

This notice is being sent to ensure that you are aware of the due date for the 12-Day Pre-Election Report of Receipts and Disbursements for the primary election in which you are involved. Only those individuals who meet the following definition of candidate are required to designate a principal campaign committee and have that committee register and file reports under the Federal Election Campaign Act, as amended. If you do not meet this definition, no such designation or committee filing is necessary.

Title 2 U.S.C. §431 of the Federal Election Campaign Act, as amended, defines a "candidate" as:

... an individual who seeks nomination for election, or election, to Federal office ... an individual shall be deemed to seek nomination for election, or election --

(A) if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000.

Political committees supporting candidates as defined above are required to file a Pre-Election Report of Receipts and Disbursements on FEC Form 3. This Report is due in my office by the close of business on the 12th day preceding the election; however, this Report will be considered timely filed if it is mailed certified or registered by midnight of the 15th day preceding the election. The

(OVER)

EXHIBIT 1 (1 of 2)

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Report should cover the period of time from the close of books of the last Report (or the day on which any financial activity commenced) through the 20th day preceding the election. The following dates are provided for your convenience:

<u>Type of Report</u>	<u>Filing Date</u>	<u>Mailing Date If Sent Registered/Certified</u>	<u>Closing Date</u>
Pre-Election	May 14, 1992	May 11, 1992	May 6, 1992

Contributions of \$1,000 or more received after the 20th day, but more than 48 hours before the election, must be reported within 48 hours of their receipt. This notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

If additional committees are authorized by the candidate, their Pre-Election Reports should be filed with the principal campaign committee which shall compile and file such reports with the Clerk of the House of Representatives.

If you have any questions regarding this matter or need any additional forms, please do not hesitate to contact my staff in the Office of Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515-6612, (202) 225-1300.

EXHIBIT 1 (2 of 2)

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

OFFICE OF THE CHAIRMAN

Dear Candidate:

I write to you personally to alert you to several serious reporting problems that candidates have encountered with frequency during the past several years.

We recognize that the federal campaign reporting regulations and the law that underlies them can seem very complex. Accurate reporting of campaign receipts and expenditures is, however, central to the purpose and mandate of the federal election laws.

Being involved in an enforcement case with the FEC, which is time consuming and can result in a civil penalty of thousands of dollars, is the last thing any candidate or campaign wants. Therefore, I wish to point out the following specific rules in order to help you avoid a few of the more common recurring problems from previous elections.

PROBLEM ONE: Correcting Contributions That Appear Excessive

The law caps the amount that any one individual may contribute to you at \$1,000 per election. Any contribution beyond that is illegal on its face. This means that any check from an individual of more than \$1,000 is suspect. To avoid being charged with a violation in such instances, the excessive portion must be refunded to the contributor, reattributed to a joint contributor or redesignated by the contributor to a future election. Both reattributions and redesignations must be signed by the contributors themselves. Until the problem is fixed, the committee may not use the money, but it should report the contribution, with a notation that the donor is being contacted to resolve the problem. Many candidates have found it helpful to place such excessive contributions in a separate account until the question is resolved. Unless the campaign receives a signed reattribution or redesignation from the contributors, it must refund the excessive portion within 60 days after the receipt of the original check. We have sent your treasurer a Record supplement explaining this process in more detail.

EXHIBIT 2 (10F2)

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PROBLEM TWO: Candidate Self-Support

As the candidate, you are not bound by the \$1,000 contribution limit. Any personal funds you give to your campaign, however, must be reported as a contribution regardless of whether you donate the funds as a direct contribution or as a loan. If you loan money to your campaign, special reporting is required to distinguish future repayments from what otherwise would look like personal enrichment.

We also want to note that if you make a direct contribution to your campaign, you cannot later call the gift a loan and ask the Committee to pay it back to you. Thus, if you hope eventually to receive repayment, make clear from the beginning that the donation is a loan.

You must also be sure that the money and assets you contribute or loan to your campaign belong to you personally, and not to your spouse, parents, family or friends, or to any other individual.

PROBLEM THREE: 48-Hour Reporting

After your committee has filed a 12 day pre-election report, your campaign must file a special notice disclosing every contribution of \$1,000 or more received shortly before the election. The notice must reach the appropriate filing offices within 48 hours of receipt of the contribution. This rule comes into play beginning with the cut-off date for the pre-election report (20 days before the election) and remains in effect until 48 hours before the election. Last-minute contributions must also be reported in the first report after the election. Remember, the 48-Hour reporting rule also applies to last-minute contributions and loans from you to your campaign, as well as to loans from individuals and committees, and endorsements and guarantees of bank loans.

The details on these three matters, and virtually everything else you need to know to stay within the federal election laws, are set out in your Campaign Guide. If you would like extra copies of this guide for your campaign workers, call us on 1-800-424-9530. Additionally, we are happy to send a free subscription to our monthly newsletter, the Record, to anyone you designate. (A free subscription is automatically sent to your treasurer.) Please also feel free to call us at the above number, or have your treasurer and/or campaign accountant do so, if you have any specific questions about these or other matters. As this letter should indicate, the Commission takes these reporting obligations seriously.

Sincerely,

Joan D. Aikens

Joan D. Aikens, Chairman
Federal Election Commission

EXHIBIT 2 (2 of 2)

23040934923

DON NELMS

September 17, 1992

Robin Kelly, Reports Analyst
Federal Election Commission
999 E Streett NW
Washington DC 20463

Dear Ms. Kelly:

This letter follows up our telephone conversation earlier this morning regarding your review of our "last minute" contributions reported on the 12 Day Pre-Runoff Report (5/7/92-5/20/92) filed on or before 5/28/92.

At the time of filing, I was not aware that loans in excess of \$1,000 (made by the candidate from personal funds) were also considered to be contributions subject to the 48-hour special notice filing requirement.

The Campaign Guide for Congressional Candidates (July 1988), on page 24, does not define a "last minute" contribution to include loans from the candidate's personal funds. In addition, when the loans are reported on Schedule A Itemized Receipts (FEC Form 3), as denoted in the example on page 40, they are reported as "Loans" Made or Guaranteed by the Candidate, not "Contributions".

It was not until I received a copy of the "recurring problems" letter, on or about June 1st (addressed to the candidate, undated-copy enclosed) from Joan D. Aikens, Chairman, that I realized the 48-hour reporting rule included candidate loans.

Promptly, thereafter, I have reported all subsequent "last minute" contributions (including candidate loans from personal funds) within 48-hours of receipt by special notice. These receipts were also reflected on the July 15 Quarterly Report (5/21/92-6/30/92)

If you have any questions regarding this matter, please do not hesitate to contact me at: The Committee to Elect Don Nelms, 4000 Frontage Rd, Fayetteville, AR 72703, or call me at (501) 521-3813. Thank you for your consideration.

Respectfully



Roy J. Shorter, Treasurer
The Committee to Elect Don Nelms
ID Number: C00263699

DEMOCRAT ★ US CONGRESS ★ 3RD DISTRICT

The Committee to Elect Don Nelms ★ Ken Lance, Chairman ★ 17 1/2 East Center ★ Fayetteville, Arkansas 72701

NELMS
MEANS BUSINESS

EXHIBIT 3

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DGC 8325

53 JAN 23 AM 11:00

Ms. Joan Aikens, Chairman
Federal Election Commission
999 E Street NW
Washington, DC 20463

January 23, 1993 RE: MUR 3697
Committee to Elect Don Nelms

Dear Ms. Aikens:

I am writing you concerning the fact that your office has found reason to believe that our campaign committee and Roy Shorter, as treasurer, has violated the 48-hour notice reporting rule.

Mr. Shorter did have full responsibility for reporting to your commission all activity of our campaign, and he was provided a manual from your office and we had complied with all of its regulations as stated therein.

Your campaign guide did not state that a candidate loan should be reported as a contribution for 48-hour reporting requirements. Your guide specifically states, on page 11, that "personal funds loaned to the campaign are reported as loans from the candidate from the onset."

The only letter I know of that was sent to me was a letter from you that I personally received at my home address. This letter (undated) addressed the 48-hour reporting problem.

At the time, I was travelling and was involved in our campaign. I did not read it until approximately two weeks after it had arrived. After reading this letter, I saw no need to contact Mr. Shorter because I assumed the campaign guide covered those topics of your letter and he is a CPA who is very accurate in reporting these types of matters. Your letter gave no indication that it contained addition regulations different from those in your campaign guide.

To my knowledge, that was the only additional information we received that specifically addressed the issue of candidate loans to be reported as contributions for 48-hour notice purposes. Your campaign guide does not state this.

I will note that you state you have sent this letter, as well as a report notice to our campaign committee, however, our records do not show that we ever received these items.

During my campaign it was well known that I was personally funding my campaign. This was because I did not want to be affected by any adverse influence by special interest groups. I stated this position on numerous occasions publicly. There was no way that any of my loans to the campaign committee could have been construed as being deceiving to the public or any other candidate running within the 3rd Congressional District.

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Ms. Joan Aikens
January 23, 1993
Page Two

Your commission has provided us a manual, we followed its rules, and we cannot find any notices of revision until after the fact. I suggest that this manual should have been revised to make this 48-hour notice issue clear or that we should have been notified by certified mail of its changes. Mr. Shorter received no notification of your changes and I did not make a connection from your letter that you were, in fact, making new rules.

I request that you take no further action against our committee and find that there was no violation or penalty.

Ms. Aikens, if you want to discuss this matter with me personally, please let me know. I'll be happy to cooperate with you in any way.

Sincerely yours,



Don Nelms

cc: Holly Baker, Attorney

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GROWING WITH SPRINGDALE 1537
 ROBERT D. OR MILLIE NELMS
 1 5/8 NELMS MOTORS, INC.
 2781 N. COLLEGE AVE.
 FAYETTEVILLE, AR 72703

Federal Election Commission \$ 300.00
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FIRST NATIONAL BANK of Springfield - Springfield, Arkansas 7108
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Robert D. Williams

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
The Committee to Elect Don Nelms)
and Roy J. Shorter, as treasurer)

MUR 3697

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Roy J. Shorter, the treasurer of the Committee to Elect Don Nelms ("Committee").

This matter began as a referral from the Reports Analysis Division on October 14, 1992. The Committee failed to file two 48 Hour Notices for candidate loans totaling \$25,000 in the 1992 primary runoff election held on June 9, 1992. Don Nelms lost in Arkansas' 3rd congressional district. On November 5, 1992, the Commission found reason to believe that the Committee had violated 2 U.S.C. § 434(a)(6)(A). The Commission also approved a proposed conciliation agreement

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A

check for the civil penalty has been received. Attachment 2.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer.

2. Close the file.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

3-30-93
Date

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

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Holly Baker

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Committee to Elect Don Nelms) MUR 3697
and Roy J. Shorter, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 5, 1993, the Commission decided by a vote of 5-0 to take the following actions in MUR 3697:

1. Accept the conciliation agreement with The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer, as recommended in the General Counsel's Report dated March 30, 1993.
2. Close the file.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated March 30, 1993.

Commissioners Aikens, Elliott, McGarry, Potter and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

4-5-93
Date

for Delores Hardy
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Wed., March 31, 1993 12:11 p.m.
Circulated to the Commission	Wed., March 31, 1993 4:00 p.m.
Deadline for vote:	Mon., April 5, 1993 4:00 p.m.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Committee to Elect Don Nelms) MUR 3697
and Roy J. Shorter, as treasurer)

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93 MAR 24 AM 11:27

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that The Committee to Elect Don Nelms and Roy J. Shorter, as treasurer ("Respondents"), violated 2 U.S.C. § 434(a)(6).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

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1. The Committee to Elect Don Nelms is a political committee within the meaning of 2 U.S.C. § 431(4), and is the authorized principal campaign committee for Don Nelms's 1992 congressional campaign.

2. Roy J. Shorter is the treasurer of The Committee to Elect Don Nelms.

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives 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). The Act further requires notification to be made within 48 hours after the receipt of the contribution and 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. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

4. 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. Each guarantor or endorser of a loan shall be deemed to have contributed that portion of the total

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amount of the loan for which the guarantor or endorser agreed to be liable until the loan is repaid. 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C).

5. The Respondents received on May 7 and May 15, 1992, two contributions of \$1,000 or more (in the form of loans from the candidate) totaling \$25,000.

6. The contributions were reported on Schedules A and C, of the 1992 12 Day Pre-Runoff Report, (with the candidate, Don Nelms, listed as the maker of a \$10,000 loan and a \$15,000 loan to the Committee).

7. The Respondents did not submit 48 Hour Notices for these contributions.

V. The Respondents failed to report campaign contributions in excess of \$1,000 received after the 20th day, but more than 48 hours before the primary election, within 48 hours of receipt of the contributions, in violation of 2 U.S.C. § 434(a)(6).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Three Thousand Dollars (\$3,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it

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may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:
Lawrence M. Noble
General Counsel

BY: *Lois G. Leiner*
Lois G. Leiner
Associate General Counsel

4-9-93
Date

FOR THE RESPONDENTS:

Ray J. Stumm, Treasurer
(Name)
(Position)

3-18-93
Date

23040934935



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 9, 1993

Roy J. Shorter
c/o Nelms Motors, Inc.
2781 North College St.
Fayetteville, AR 72703

RE: MUR 3697
Committee to Elect Don Nelms
and Roy J. Shorter, as treasurer

Dear Mr. Shorter:

On April 5, 1993, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your behalf in settlement of a violation of 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Holly Baker
Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3697

DATE FILMED 4/21/93 CAMERA NO. 2

CAMERAMAN E.E.S.

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