



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2008 OCT 14 A 10: 04

October 10, 2008

**TWO WAY MEMORANDUM**

TO: OGC Docket  
FROM: Rosa E. Swinton *RES*  
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Gephardt for President, inc.** The check is number **4938** dated **October 7, 2008** in the amount of **42,000.00**. A copy of the check and all correspondence are attached. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

---

---

TO: Rosa E. Swinton  
Accounting Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$ 42,000.00,  
the MUR/Case number is 5960 and in the name of \_\_\_\_\_  
Gephardt for President, Inc.

Please this deposit in the account indicated below:

Civil Penalties Account, 95-1099.160

Miscellaneous Receipt Account, 95-3220.160  
(Disgorgement)

*Rosa E. Swinton*  
Signature

10-14-08  
Date

28044221291



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FACSIMILE and U.S. MAIL**

September 25, 2008

Brian Svoboda, Esq.  
Perkins Coie LLP  
607 14<sup>th</sup> Street, NW, #800  
Washington, DC 20005

RE: MUR 5960  
Gephardt for President, Inc.  
and S. Lee Kling, in his official capacity as  
treasurer

Dear Mr. Svoboda:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441a(f) and 441a(b)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended, and 26 U.S.C. § 9035(a), a provision of Chapters 95 and 96 of Title 26, U.S. Code. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). 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).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg  
Attorney

Enclosure  
Conciliation Agreement

28044212463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Gephardt for President, Inc. ) MUR 5960  
and S. Lee Kling, in his official capacity )  
as treasurer )

RECEIVED  
FEC MAIL CENTER  
2008 APR 23 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 Gephardt for President, Inc. and S. Lee Kling, in his official capacity as treasurer ("Respondents" or "the Committee"), violated 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f) and 26 U.S.C. § 9035(a).

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:

1. Gephardt for President, Inc. is the principal campaign committee for Congressman Richard A. Gephardt, within the meaning of 2 U.S.C. § 431(5). Gephardt for

28044212464

President, Inc. and Richard A. Gephardt received \$4,104,320 in public funds for the purpose of seeking the 2004 Democratic Party nomination for the office of President of the United States.

2. S. Lee Kling is the treasurer of Gephardt for President, Inc.

3. The Committee was prohibited from receiving more than a total of \$2,000 per election from any one person. 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f); 11 C.F.R. §§ 110.1(a) and (b).

4. Contributions which on their face exceed the Act's contribution limitations, and contributions which do not appear to be excessive on their face, but which exceed the Act's contribution limits when aggregated with other contributions from the same contributor, may be either deposited into an appropriate campaign depository or refunded to the contributor.

11 C.F.R. § 103.3(b)(3). For those excessive contributions deposited which were made on written instruments imprinted with the names of more than one individual, the treasurer may reattribute the contribution among the individuals listed, provided such attribution would not cause any contributor to exceed contribution limitations and the committee notifies the contributor in writing within 60 days of the treasurer's receipt of the contribution how the contribution was attributed and that the contributor may request a refund of the contribution. 11 C.F.R. § 110.1(k).

5. No candidate for the office of the President of the United States, in the case of a campaign for nomination for election to such office, who is eligible to receive payments from the Secretary of the Treasury under the Presidential Primary Matching Payment Account Act, may make expenditures in any one state that exceed the greater of 16 cents multiplied by the voting age population of that State. 2 U.S.C. § 441a(b)(1)(A). Expenditures are allocated to a particular State if they are incurred by a candidate's authorized committee for the purpose of influencing the

nomination of that candidate for the office of President with respect to that State. 11 C.F.R. § 106.2(a)(1).

6. No candidate or political committee shall knowingly make any expenditure in violation of section 441a. 2 U.S.C. § 441a(f). No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitations applicable under section 441a(b)(1)(A). 26 U.S.C. § 9035(a).

7. The Final Audit Report on Gephardt for President, Inc. concluded that the Committee received excessive contributions totaling \$211,566. *See* 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(a) and (b). \$114,000 of these excessive contributions were resolved through reattribution under 11 C.F.R. §§ 103.3(b)(3) and 101.1(k); however, such attribution was untimely. *See* 2 U.S.C. § 441a(b)(1)(A). \$97,556 of the excessive contributions were refunded to the contributors or disgorged in accordance with Audit Report recommendations. *See* 11 C.F.R. § 103.3(b)(3).

8. The Final Audit Report on Gephardt for President, Inc. concluded that the Committee spent \$1,506,700 attributable to the 2004 Iowa spending limitation for Presidential candidates in the primary election. Pursuant to 2 U.S.C. § 441a(b)(1)(A), the spending limitation for Iowa in 2004 was \$1,343,757, and therefore the Committee exceeded the limit by \$162,943.

9. The Commission does not allege and there is no finding that Richard A. Gephardt engaged in any wrongdoing in connection with alleged campaign violations.

V. Gephardt for President, Inc. and S. Lee Kling, in his official capacity as treasurer:

1. Violated 2 U.S.C. § 441a(f) by accepting \$211,556 in contributions in excess of the Act's contribution limitations.

2. Violated 2 U.S.C. § 441a(b)(1)(A), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a) by making expenditures of \$162,943 in excess of the Act's expenditure limit for the State of Iowa for the 2004 presidential election.

VI. Gephardt for President, Inc. and S. Lee Kling, in his official capacity as treasurer will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of forty-two thousand dollars (\$42,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).
2. Respondents will cease and desist from violating 2 U.S.C. § 441a(f) by accepting excessive contributions and from violating 2 U.S.C. § 441a(b)(1)(A), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a) by exceeding expenditure limitations.

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 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 requirements 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,

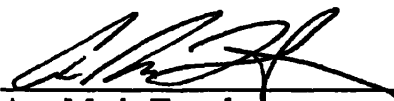
28044212467

MUR 5960 (Gephardt for President, Inc.)  
Conciliation Agreement

made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

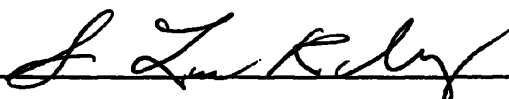
FOR THE COMMISSION:

Thomasenia P. Duncan  
General Counsel

BY:   
Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

9/14/08  
Date

FOR THE RESPONDENTS:

  
Name: \_\_\_\_\_  
Position: Treasurer

8/27/08  
Date

28044212468