

October 29, 2004

Noel Hillman
Chief
Public Integrity Section
Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20510

BY FAX: 202-514-3003

Dear Mr. Hillman:

Citizens for Responsibility and Ethics in Washington has learned that Colorado Congresswoman Marilyn Musgrave appears to be running her re-election campaign out of her congressional office in violation of federal law and congressional ethics rules.

Rep. Musgrave, who represents the Fourth District of Colorado, is maintaining both her district office and her campaign headquarters at 5401 Stone Creek Circle in Loveland, Colorado. Although Rep. Musgrave claims that the campaign is run out of suite 777, while the district office is in suite 204, a floor plan of the building indicates that there is no suite 777 and the campaign office can be accessed only from a fire door or from the main door in the congressional office.

A spokesperson for Group Real Estate, which owns the building housing the offices, has confirmed that there is no suite 777 in the building and has stated that Rep. Musgrave's office made arrangements with the post office to have the suite recognized as the address for her campaign office.

According to one local press report, people who have visited the campaign office have been directed to a fire door, which is alarmed, as the entrance to that office. Michael Becker, Campaign Office Spat Erupts, *Sterling Journal-Advocate*, October 28, 2004 (attached as Exhibit A). The publisher for the *Fort Morgan Times* disclosed that he visited 5401 Stone Creek Circle in an effort to locate the campaign office, but was unable to find it. William R. Holland, Out and about Suite 777: The Ghost Suite, *Fort Morgan Times*, October 27, 2004 (attached as Exhibit B). In fact, a building receptionist advised Mr. Holland that there was no suite 777 in the building. When Mr. Holland explained that he was seeking Congresswoman Musgrave's campaign office, the receptionist directed him to an emergency exit door that could not be opened from the outside, effectively prohibiting any entry to the office. Id.

As you know, the use of a congressional office for campaign purposes violates numerous criminal and campaign finance laws as well as the House of Representatives Standards of Official Conduct.

First, 18 U.S.C. §607(b) prohibits Members of Congress from soliciting contributions in a manner that directs contributors to mail or deliver a contribution to “any room or building occupied in the discharge of official duties . . .” Violations of this section are subject to fines and up to three years imprisonment. Thus, if Rep. Musgrave has been soliciting campaign contributions from this office, she may well be in violation of the statute.

Second, 18 U.S.C. §602 prohibits Members of Congress from soliciting political contributions from employees. Violations of this section are subject to fines and up to three years imprisonment. Federal election law defines “contribution” to include “any gift . . . or anything of value . . .” 2 U.S.C. §431(8)(A)(i). FEC regulations define “anything of value” to include all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. 11 CFR 100.52(d)(1). Thus, if district office employees are also required to staff the campaign office, Rep. Musgrave may be illegally soliciting contributions, in the form of service, from her employees.

Moreover, using a district office as a campaign office violates the House of Representatives Standards of Official Conduct. According to a Campaign Booklet published by the House Committee on Standards of Official Conduct, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.” (*Citing House Select Comm. on Ethics, In the Matter of Rep. Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. 7-8 (1997)). “The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.” The Campaign Booklet very clear states that House offices including district offices, are supported with official funds and, therefore, are considered official resources. As a result, they **may not be used to conduct campaign or political activities.**

The House Committee on Standards of Official Conduct has also noted that the misuse of official House resources for campaign purposes may also violate the theft of government property statute, 18 U.S.C. §641. The Booklet refers Members to two prior incidents: first, in 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business. United States v. Bresnahan, Criminal No. 93-0409 (D.D.C. 1993); *see* Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250.

Second, in 1979, a former Member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign. United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); *see id.* 249-50. Thus, if Rep. Musgrave’s district office employees are working in the campaign office during working hours, they may be in violation of section 641.

Although Citizens for Responsibility and Ethics in Washington has not visited Rep. Musgrave's district office or campaign headquarters, published accounts regarding the unnatural proximity of the two offices suggest that an investigation into the matter is warranted. Given that when in Washington, D.C., Members of Congress routinely leave their Capitol Hill offices to make even short campaign related telephone calls, we find it very surprising that Rep. Musgrave would show such indifference to the appearance of impropriety created by the present situation.

We look forward to a prompt investigation into this matter. Thank you.

Sincerely,

Melanie Sloan
Executive Director
Citizens for Responsibility and Ethics
in Washington

Encls.

cc: House Committee on
Standards of Official Conduct