

THE WHITE HOUSE

WASHINGTON

August 16, 1977

MEMORANDUM FOR: ROBERT LIPSHUTZ

FROM: MICHAEL CARDOZO *MC*  
DOUG HURON *DH*

RE: Lance's Campaign Overdrafts

The overdrafts incurred by Bert Lance's campaign committee during his 1974 gubernatorial campaign were discussed in his FBI report and have now received attention from the press. We do not believe, however, that either the FBI or the media have adequately analyzed the matter. The purpose of this memo is to provide a framework for analysis of that portion of the Comptroller's forthcoming report dealing with the overdraft situation.

During 1974 the applicable law governing political contributions by national banks was 18 U.S.C. 610, which provided in relevant part:

It is unlawful for any national bank...to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election....

The term "contribution" included a loan. 18 U.S.C. 591.

The Bureau report is somewhat ambiguous, but certain salient features appear:

1) During the period October 1973 - August 1974, an arrangement was established whereby the Calhoun bank paid certain of Lance's campaign expenses out of its own funds, then was reimbursed by check drawn on one of the two campaign accounts maintained at the bank (Bert Lance Campaign Committee and TBL). (p.9.)

2) Full reimbursement was not always possible and overdrafts resulted. (p.9.)

/The 1976 FECA amendments repealed 18 U.S.C. 610, but a similar provision is now found at 2 U.S.C. 441b.

3) The overdrafts for the Bert Lance Campaign Committee account amounted to some \$135,000 (p.7); the report contains no figure for the TBL account.

4) In October 1973, when the bill payment arrangement was established, Lance anticipated that there would be overdrafts and gave the bank his personal check for \$5,000 with a letter stating that it was to be used to cover any overdrafts which might arise. The \$5,000 was exhausted in early February 1974, and the bank continued to permit overdrafts without requesting any further "cover" from Lance. (pp.9-10.) The bank may, however, have had Lance's personal guarantee of repayment at all times. (p.11.) (Lance also had savings deposit of \$110,000 at Calhoun.)

5) Sometime between December 1974 and September 1975 Lance repaid all overdrafts resulting from payment of campaign expenses. Sometime after August 30, 1975, Lance paid all interest due on the overdrafts. (p.12.) Payment of the interest apparently occurred during the time of the original Comptroller's investigation; a Treasury memo summarizing the results of that investigation was dated September 22, 1975. (p.8.)

6) The Justice Department in Washington, which studied the overdraft matter in the context of 18 U.S.C. 610, declined prosecution, either because Justice could find no evidence of an intent to violate the statute or simply because a conviction seemed unlikely. (The FBI report mentions the first factor, while the second is suggested in an article in the most recent Newsweek; the two tend to merge and both were probably present.) The degree of thoroughness of the Justice investigation is not apparent from the FBI report.

### Analysis

Lance's campaign committee received, through use of an overdraft system, a series of short term loans. The making of such loans violated 18 U.S.C. 610. Justice determined not to attempt to prosecute the violation. Assuming the Comptroller's report reveals no significant additional facts concerning the campaign overdrafts, we must determine whether, for our purposes, it is sufficient that Justice declined prosecution, or whether we should judge Lance's conduct--and the conduct of high officials generally--by a more rigorous standard than is imposed by Justice in its criminal prosecutions.