

Record

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Federal Election Commission

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Audits

Audit of Michigan Republican State Committee

The final audit of the Michigan Republican State Committee (MRSC), approved by the Commission on February 8, 2001, found that the MRSC did not allocate all of its administrative expenses and also misstated some financial activity during the 1998 election cycle.

Under Commission regulations, a political organization that maintains both federal and nonfederal accounts must allocate all types of administrative disbursements between both accounts. 11 CFR 100.8(a), 104.10(b)(4), 106.5(a), (d), (e), (f) and (g) and 106.6(e). The MRSC maintains a federal account and two nonfederal accounts (an Administrative Account and a State Account).

Allocation of Administrative Expenses

According to the MRSC, funds from the Administrative Account were not used to influence federal, state or local elections. The MRSC did not, therefore, consider disbursements from the Administrative Account to be campaign related and did not include transactions from this account on its federal or state

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Advisory Opinions

AO 2000-30

Nonconnected PAC's Receipt and Use of Securities

Pac.com, a nonconnected political action committee, may accept individual contributions of publicly-traded stocks and stocks that are not publicly traded, subject to the contribution limits of the Federal Election Campaign Act (the Act). Pac.com may not, however, make contributions of stock to candidate committees and other political committees. Instead, pac.com must sell the stocks and deposit the proceeds into its depository account. It may then use the proceeds to make monetary contributions via check or other similar draft on its depository account.

Receipt of Stock: Publicly and Nonpublicly Traded

Pac.com may accept individual contributions of stocks that are publicly traded on an exchange and stocks that are not publicly traded, so long as the contributions are permissible within the prohibitions

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Audits

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disclosure reports. These transactions included administrative expenses associated with a state convention, state committee meetings, Republican National Committee conferences and meetings and the daily operation of the MRSC.

The Commission's audit found that approximately \$383,281 of these administrative expenses were required to be allocated between the Administrative Account and the federal account. Therefore, the federal account must reimburse the Administrative Account \$49,827 to pay its share of these expenses.

The Commission's audit also found \$648,165 in allocable administrative expenses that were paid by the State Account. These expenses were associated with consulting, a state convention, get-out-the-vote (GOTV) phone calls and absentee voter slate cards. The MRSC's federal account must reimburse the State Account \$88,516 to pay the

federal share of these allocable expenses.

Prior to the final audit report, the MRSC reimbursed the Administrative Account \$3,484 and the State Account \$72,408 using funds from its federal account. The MRSC also demonstrated that \$51,848 of the expenses paid by the Administrative and State Accounts represented solely nonfederal expenses that did not need to be allocated. The Commission's final audit report found that the MRSC still needed to reimburse the Administrative Account \$39,603 and the State Account \$16,108 using funds from its federal account. The MRSC must report all of these shared expenses on Schedule H4.

Misstatement of Financial Activity

The Commission's audit also found misstatements in the MRSC's reports of its beginning and ending cash and its total receipts and disbursements during this period. Prior to the final audit report, the MRSC filed amended financial disclosure reports to correct these misstatements. ♦

Audit of Schumer '98

On April 2, 2001, the Commission approved the final audit report of Schumer '98 (the Committee), the principal campaign committee for Senator Charles E. Schumer (the Candidate). The report found that, during the 1998 election cycle, the Committee did not:

- Refund, reassign or redesignate excessive contributions in a timely matter;
- Properly state some financial activity;
- Properly disclose receipt of transfers from the Candidate's 1996 congressional committee;
- Properly itemize contribution refunds and contributions from political action committees (PACs);

- Properly disclose disbursements;
- File 48-hour notices in a timely manner; and
- Properly allocate joint fundraising expenses.

Report of Excessive Contributions

Under Commission regulations, once a committee has deposited a contribution that is in excess of the contributor's limits, the committee must refund the excessive portion of the contribution, or otherwise remedy the excessive contribution, within 60 days of the treasurer's receipt of the contribution. Commission regulations allow a committee to ask a contributor to redesignate and/or reattribute the portion of the contribution that exceeds the contributor's limit; the reattribution or redesignation must be received by the committee within 60 days of the committee's receipt of the excessive contribution. 11 CFR 103.3(b)(3) and 110.1 (b)(5)(i)(A) and (C).

In this case, the audit report found that contributions to the Committee totaling \$951,454 were in excess of the contribution limits. The Committee refunded, reattributed or redesignated \$97,050 of these funds, but not within the time frame required by Commission regulations. The audit report found that \$854,404 in excessive contributions still required refunds.

Misstatement of Financial Activity

The Commission's audit found that the Committee had a material misstatement of its bank activity with respect to cash on hand on December 31, 1998. The Committee filed amended reports to correct these misstatements.

Transfers from Candidate's Congressional Committee

The Committee did not report receiving transfers totaling \$229,848 from the Candidate's 1996 congressional committee (Friends of

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Schumer).¹ Additionally, the Committee improperly reported contributions which were received after the 1996 general election and were included in these transfers. The Committee filed amended disclosure reports, which disclosed the transfers and those contributors whose contributions were received after the 1996 general election.

Itemizations of Contributions and Contribution Refunds

The Committee did not itemize political committee contributions totaling \$67,950, and it did not itemize contribution refunds totaling \$58,225.² The Committee subsequently filed amended disclosure reports itemizing these contributions and refunds.

Disclosure of Disbursements

The Committee improperly disclosed disbursements totaling \$6,354,835. The majority of errors consisted of multiple disbursements that were added together and disclosed as a single entry per reporting period for each payee. The Committee filed amended disclosure reports which properly disclosed these disbursements, including the date and amount of each disbursement.

Filing of 48-Hour Notices

Authorized committees must file special notices regarding contribu-

tions of \$1,000 or more received less than 20 days but more than 48 hours before the election in which the candidate is running. 2 U.S.C. §434(a)(4)(B)(6). For the primary and general elections of 1998, the Committee did not file notices for 57 last-minute contributions. Additionally, 180 notices were filed late.

Joint Fundraising Activities

Under Commission regulations, committees engaged in a joint fundraising effort must allocate expenses according to the formula used to distribute proceeds. 11 CFR 102.17(c). The Committee was involved in two joint fundraising activities, the representatives of which were Victory in New York (Victory) and Win New York (Win). In the case of Victory, the Commission's audit found that the Committee either did not pay its proportionate share of expenses or did not report all contributions related to the activity. In response, the Committee provided a detailed schedule of all Victory contributions and also filed amended memo Schedules A, which disclosed additional contributor information.

In regards to Win, \$3,750 in expenses were identified as allocated to the Committee. The Committee received \$176,850 in joint fundraising proceeds, or 24.3 percent. Win received the rest, \$549,764 or 75.7 percent. Win did not report any joint fundraising expenses on its original disclosure reports through December 1998. Thus, the Commission cannot verify the accuracy of the Committee's reports with respect to the joint fundraising activity or whether either participant received or made a reportable in-kind contribution. ♦

Advisory Opinions

(continued from page 1)

and limitations of the Act. 2 U.S.C. §441a(a)(1)(C).¹

Publicly-Traded Stock. A contribution of publicly-traded stock would be valued at the closing price of the stock on the day of its receipt by pac.com. The price would be the closing price of that particular class of corporate stock on the exchange on which the stock is principally dealt.²

Nonpublicly-Traded Stock. In order to provide a valid basis upon which nonpublicly-traded stock could be valued, the contributor should have such stock appraised by an independent qualified appraiser. The appraiser should consider the factors described by the Internal Revenue Service for determining the fair market value of stock of a closely-held corporation or where selling prices are unavailable. These factors include the company's:

- Net worth;
- Prospective earning power;
- Dividend-paying capacity; and

(continued on page 4)

¹ Commission regulations define a contribution as anything of value given for the purpose of influencing a federal election and list "securities" as a specific example of an in-kind contribution. 11 CFR 100.7(a)(1)(iii)(A). Pac.com will accept contributions of stock of domestic, for-profit corporations from individual, noncorporate investors. Commission regulations at 104.13(b) set out how to report contributions and disposition of stock.

² The concept of using the price on the exchange on which the stock is principally dealt is derived from Page 5 of Publication 561: Determining the Value of Donated Property (Rev. February 2000), issued by the Internal Revenue Service. The standard accounts for the possibility that the stock may be traded on more than one exchange. Pac.com will not accept shares in companies whose private stock is in SEC registration to make an initial public offering (IPO) until the IPO is concluded.

¹ Commission regulations allow for unlimited transfers between a candidate's previous federal campaign committee and his or her current campaign committee. Such transfers must be reported. 11 CFR 110.3(c)(4).

² The Federal Election Campaign Act requires that authorized committees disclose all contributions from all political committees and that authorized committees report all disbursements for refunds of campaign contributions. 2 U.S.C. §§434(b)(2) and 434(b)(4)(F).

Advisory Opinions

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- Other relevant factors, which include “the goodwill of the business, the economic outlook in the particular industry, the company’s position in the industry and its management, and the value of securities of corporations engaged in the same or similar business.” For preferred stock, the most important of the other relevant factors are its yield, dividend coverage and protection of its liquidation preference.

The fair market value of the contributed stock would be the greater of:

- The selling price of the stock at its most recent outside funding event, as described in the request;³ and
- The fair market value established by an independent qualified appraisal under the standards set out above.

The fair market value of the contributed stock must be appraised using a valuation date as of no more than 15 days before pac.com’s receipt of the contribution. If the stock can be accurately appraised as of a valuation date less than 15 days prior to the committee’s date of receipt, that date should be used. Upon contributing the stock, the

³ Pac.com will only accept shares when the external funding event has occurred with SEC-qualified “Accredited Investors,” (as defined in Regulation D of the Security and Exchange Commission’s General Rules and Regulations for the Securities Act of 1993), and the event included sophisticated investors who are not employees, principals or principal owners or relatives of such persons. 17 CFR 230.501(a). See also 17 CFR 230.501 through 230.508.4. No stock will be accepted where such a funding event closed more than 120 days prior to the contribution. No discounts, premiums or other adjustments will be applied or accepted by pac.com.

contributor should also present a statement from an independent qualified appraiser attesting to the value of the stock and the criteria and bases the appraiser used, along with a statement of the selling price from the most recent outside event.

Retention of Stock

Under Commission regulations, all receipts by a political committee must be deposited in the committee’s depository bank accounts within ten days of the treasurer’s receipt of the contribution. Pac.com’s securities account does not qualify as a depository account. 2 U.S.C. §432(h)(1), 11 CFR 103.3(a). In past advisory opinions, however, the Commission found that a committee could receive certain kinds of items as in-kind contributions without having to liquidate them and deposit the monetary proceeds within ten days of receipt. See AOs 1989-6 and 1980-125. In this case, pac.com can hold the contributed stocks in a securities account for disposition at a later time.

Disbursement of Stock

The committee may not use the securities account to make contributions of stock and other securities to candidate committees or other political committees. Under the Act and Commission regulations, all disbursements by a political committee must be made by check or similar draft drawn on a committee depository account. 2 U.S.C. §432(h)(1), 11 CFR 102.10. Thus, political committee funds may be transferred from the depository account and invested, but they must be returned to the depository before being used to make expenditures. 11 CFR 103.3(a). If pac.com wants to use the stock it receives as contributions in order to make contributions of its own to other political committees, it must sell the stocks and deposit the proceeds directly into its depository accounts. It may then contribute the proceeds from these

stocks to candidates and committees.

Purchase of Stock as a Contribution to the Committee

If a stock is purchased directly from the committee and the purchaser is known, the entire purchase price is a contribution by the purchaser, and the purchase (aggregated with other contributions by the same purchaser to the committee) is subject to the limits of 2 U.S.C. §441a(a)(1)(C).

If the committee sells the stock through an established market mechanism whereby it does not know the identity of the purchaser, the purchaser will not be considered a contributor. If a broker arranges the sale of stock in the ordinary course of business, it is assumed that the purchaser would not know that the stock is owned by the committee. If these conditions are not met, and depending on other facts and circumstances in a stock sale arranged by a broker on behalf of pac.com, the purchase may result in a contribution to pac.com by the purchaser.

Reporting the Receipt and Sale of Stock

Receipt of stock. When the committee receives a contribution of stock and liquidates the stock at a later date, it should follow the reporting procedures set out at 11 CFR 104.13(b) as further explained in AO 1989-6. It should report as a memo entry the receipt of the stock as a contribution, including the contributor’s name and address (and other information if the \$200 threshold is exceeded) and the fair market value of the contribution.

Sale of stock. If pac.com sells stock to a buyer who is known, the dollar total of the purchase should be reported as a cash contribution from the buyer, and the buyer should be identified. Below this entry, the committee should report as a memo entry the identification of the original contributor(s) of the

stock being sold and the fair market value of each of their contributions at the time received.

If pac.com sells stock through an established market mechanism to a buyer who is not known, the dollar total of the purchase should be reported as an "other receipt" listing the broker and explaining that the amount represents the proceeds from the sale to an unknown purchaser. Below that, the Committee should report as a memo entry the same information about the original contributors that would be reported for the sale of stock directly to a known purchaser.

Date Issued: March 16, 2001;
Length: 9 pages. ♦

AO 2001-3

Use of Campaign Funds to Purchase an Automobile for Campaign Purposes

The primary campaign committee for Congressman Gregory Meeks, Meeks for Congress ("the Committee"), may use campaign funds to purchase an automobile to be used primarily for campaign purposes. This use of campaign funds does not represent a conversion of campaign funds to personal use.¹

Commission Regulations on Personal Use

Under the Federal Election Campaign Act (the Act) and Commission regulations, a candidate and a candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess cam-

paign funds to the personal use of the candidate or any other person.

Commission regulations provide guidance regarding what would be considered personal use of campaign funds. Personal use is defined as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g). Moreover, the Act and Commission regulations specifically provide that excess campaign funds may be used to pay any ordinary and necessary expenses incurred in connection with one's duties as a federal officeholder. 2 U.S.C. §439a and 11 CFR 113.2(a).

Commission regulations list a number of purposes that would intrinsically constitute personal use. 11 CFR 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis whether an expense would fall within the definition of personal use. 11 CFR 113.1(g)(1)(ii). In defining what constitutes personal use, vehicle expenses, unless they are a de minimis (inconsequential or insubstantial) amount, are among those specifically-listed examples to be analyzed on a case-by-case basis. 11 CFR 113.1(g)(1)(ii)(D). Commission regulations further provide that any personal use of funds does not constitute an "ordinary and necessary expense" in connection with the duties of a federal officeholder. 11 CFR 113.1(g)(5).

If a committee uses campaign funds to pay expenses associated with a vehicle used for both personal activities (beyond a de minimis amount) and for campaign or officeholder-related activities, the portion of the expenses associated with personal activities constitutes a personal use of campaign funds unless the person using the vehicle reimburses the campaign account within thirty days

for the expenses associated with his or her personal activities. 11 CFR 113.1(g)(1)(ii)(D).

Vehicle Expenses and the Campaign Committee

In this case, the Committee would own the automobile, and it would be used primarily for campaign-related purposes. The Committee is required to keep a mileage log, updated with each use of the car, to document the campaign and noncampaign use. This log would allow the Committee to comply with the record-keeping requirements for committee reports at 11 CFR 104.14(b)(1). The Committee plans to use the automobile according to a ratio of 95 percent for campaign activity and 5 percent for noncampaign activity. The 5 percent for noncampaign activity is de minimis and, therefore, would require no reimbursement.²

Date Issued: March 12, 2001;
Length: 4 pages. ♦

Advisory Opinion Requests AOR 2001-4

Use of electronic signatures to authorize payroll deductions (Morgan Stanley Dean Witter & Co. Political Action Committee)

(continued on page 6)

¹ Prior to the adoption of its regulations on personal use, the Commission had permitted campaign committees to purchase vehicles for campaign use. AOs 1992-12 and 1987-2. The Commission had also permitted the purchase specifically in cases where the candidate had proposed to make reimbursed personal use of the vehicle. AO 1992-12.

² The Congressman planned to reimburse the Committee for any use of the automobile beyond campaign use, according to standard IRS mileage rates. However, some of this use was planned for the Congressman's officeholder duties, including travel from Washington to his Congressional District in New York. Commission regulations at 11 CFR 113.1(g)(1)(ii)(D) expressly exclude from the definition of personal use vehicle expenses that would relate to federal officeholder duties. Therefore, the Commission regulations do not require the Congressman to reimburse the Committee for these vehicle expenses.

Advisory Opinions

(continued from page 5)

AOR 2001-6

Qualification of state committee of political party (Maryland Green Party, March 29, 2001)◆

Alternative Disposition of Advisory Opinion Request AOR 2001-5

The requester withdrew the request for this advisory opinion on April 12, 2001. AOR 2001-5, submitted on March 21, 2001, sought the Commission's opinion on the application of FEC allocation regulations to party committee litigation expenses that were related to state law issues.◆

Court Cases

On Appeal

Christine Beaumont v. FEC

On March 6, 2001, the Commission appealed this case to the U.S. Court of Appeals for the Fourth Circuit. The appeal challenged a final judgment by the U.S. District Court for the Eastern District of North Carolina, Northern Division, which found that the prohibitions on corporate contributions and expenditures of the Federal Election Campaign Act (the Act) and Commission regulations were unconstitutional as applied to North Carolina Right to Life, Inc., (NCRL), a non-profit, MCFL-type corporation.¹ The

¹ In *FEC v. Massachusetts Citizens for Life (MCFL)* 479 U.S. 238 (1986), the Supreme Court concluded that 2 U.S.C. §441b could not constitutionally prohibit certain nonprofit corporations from making independent expenditures. Commission regulations at 11 CFR 114.10 establish a test to determine whether a corporation qualifies for exemption from the Act's prohibition against corporate independent expenditures.

Virginia Special Election Reporting

The Special Election to fill the U.S. House seat of the late Congressman Norman Sisisky in the Fourth Congressional District will be held on June 19, 2001. Note that 48-hour notices are required of authorized committees that receive contributions of \$1,000 or more between May 31 and June 16 for the Special General Election. Committees involved in this election must follow the reporting schedule below.¹

For Committees Involved in the Special General Election:

	Close of Books	Reg/Cert Mail Date	Filing Date
Pre-General Report	May 30	June 4	June 7
Post-General and Mid-Year Report²	July 9	July 19	July 19

¹ Reports filed electronically must be submitted by midnight on the filing date. Reports filed on paper and sent by registered or certified mail must be postmarked by the mailing date; reports sent by any other means (including reports sent via first class mail) must be received by the Commission's close of business on the filing date.

² Committees should file a consolidated Post-General and Mid-Year Report by the filing date of the Post-General Report, as listed above.

court found that the statute and regulations infringed on NCRL's First Amendment rights without a compelling state interest. The court permanently enjoined the Commission from relying on, enforcing or prosecuting violations of 2 U.S.C. §441(b) and 11 CFR 114.2(b) and 114.10—or any other parts of the Act whose restrictions flow from these provisions—against the plaintiffs.

On March 15, 2001, the Fourth Circuit Court of Appeals consolidated this appeal with a previous appeal, filed on December 22, 2000, that requested relief from the district court's preliminary injunction of October 26, 2000. That injunction barred the Commission from relying on and enforcing the challenged provisions against the plaintiffs pending a final decision in the case. The plaintiffs filed a cross appeal on March 16, 2001.

U.S. Fourth Circuit Court of Appeals, 2:00-cv-2-BO(2).◆

Robert J. Dole v. FEC

On February 29, 2001, Robert J. Dole and Dole/Kemp '96, Inc., (Dole/Kemp), Mr. Dole's 1996 presidential campaign committee, filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition for review of the Federal Election Commission's audit of Dole/Kemp. On January 29, 2001, the Commission made a final determination that the petitioners must repay \$1,416,903.40 to the U.S. Treasury. See the February 2001 *Record*, page 8.

On April 2, 2001, the Court of Appeals granted a joint motion filed by the petitioners and the Commission to hold the case in abeyance through May 23, 2001, to allow the parties an opportunity to engage in settlement discussions that might eliminate the need for further litigation.

U.S. Court of Appeals for the District of Columbia Circuit, 01-1095.◆

Compliance

Committee Fined for Filing Report Late

On April 3, 2001, the Federal Election Commission publicized its final action on two new Administrative Fine cases, bringing the total number of cases to 50. Civil money penalties for late reports are determined by the number of days the report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fine regulation. Penalties for nonfiled reports—and for reports filed so late as to be considered nonfiled—are also determined by the financial activity for the reporting period and any prior violations. Election sensitive reports (reports and notices filed prior to an election) receive higher penalties. The committees and the treasurers of those committees are assessed civil money penalties when the Commission makes its final determination. Unpaid civil money penalties are referred to the Department of the Treasury for collection.

The Federal Managers' Association Political Action Committee and its treasurer were assessed a \$325 civil money penalty for filing a late report.

Northwest Airlines Political Action Committee and its treasurer were initially cited as having failed to file a timely report. The committee and treasurer, however, provided the Commission with evidence that they filed their 2000 September Monthly Report in a timely manner.

Public Appearances

May 7, 2001
National Community Pharmacists Association
Washington, DC
Vice Chairman Mason

Therefore, the Commission took no further action in this case.

Closed Administrative Fine case files are available through the FEC Press Office, at 800/424-9530 (press 2) and the Public Records Office, at 800/424-9530 (press 3). ♦

Outreach

Conference for Labor and Membership Organizations

On June 11-13, the Federal Election Commission will hold a conference tailored to meet the specific needs of labor and membership organizations. (Note, however, that this conference is not for trade associations, which have rules unique to them.)

The conference, which will be held in the Washington, DC area, will cover the basic provisions of the federal election law and explain the rules governing participation of labor and membership organizations and their political action committees (PACs). Workshops will also address the new electronic filing requirements, and a representative from the IRS will be available to answer election-related tax questions.

Registration

The conference registration fee is \$375. A late registration fee of \$10 will be added effective May 26.

Conference registrations are accepted on a first-come, first-serve basis. Attendance is limited, and FEC conferences regularly sell out, so please register early. Individuals may register for the conference on line at Sylvester Management Corporation's secure Web page at www.fec.gov/pages/infosvc.htm#Conferences or by calling Sylvester Management Corporation at 800/246-7277. ♦

Electronic Filing

FECfile 4 Required; Training Sessions

Reminder

After June 30, 2001, version 2.0 of the electronic filing format (which was superseded February 1, 2001, by version 3.0) will no longer be an acceptable format for submitting electronic FEC reports. After this date, FECfile users must file all reports using FECfile 4. Committees using other software should contact their software vendor.

Training

In May the FEC will offer Electronic Filing Training Sessions that will focus on using the Commission's free FECfile 4 electronic filing software. Training sessions, which are provided free of charge, will be held at the Federal Election Commission. For more specific information, contact Jeff Chumley at 202/694-1321. ♦

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