

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE

720

DATE FILMED 7/22/03

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

2003 JUN 16 P 12:36

June 16, 2003

MEMORANDUM

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ALISON L. DOONE
DEPUTY STAFF DIRECTOR

FROM: SHAWN WOODHEAD WERTH
REVIEWING OFFICER
OFFICE OF ADMINISTRATIVE REVIEW

SUBJECT: FINAL DETERMINATION RECOMMENDATION IN AF# 720 -
RON DAUGHERTY FOR CONGRESS AND SCOTT LYKINS,
AS TREASURER (C00371955)

SENSITIVE

On December 23, 2002, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that the Ron Daugherty for Congress committee and Scott Lykins, as Treasurer ("the respondents"), violated 2 U.S.C. § 434(a) for failing to file the October Quarterly Report, an election-sensitive report. A paper copy of the report was received on October 29, 2002. The report was electronically filed on November 1, 2002, 4 days before the General Election; therefore, the report was considered not filed for purposes of the civil money penalty calculation. As a result, on December 23, 2002, the Commission also made a preliminary determination that the civil money penalty was \$7,500 based on the schedule of penalties at 11 C.F.R. § 111.43.

On January 14, 2003, the Commission received the respondents' written response and supporting documentation ("challenge"). The respondents' challenge presented evidence that they had downloaded the faulty 8.0 version of the Commission's FECFile4 software that contained a flaw which could have prevented, in some situations, users from opening their data files. Because they attempted to electronically file the October Quarterly Report on October 15 using the flawed 8.0 version of the FECFile4 software before it was removed from the Commission's website, the Reviewing Officer believes that they were not able to electronically file the report in a timely manner.

THE REVIEWING OFFICER'S recommendation dated June 4, 2003 was forwarded to the Commission. A copy was simultaneously forwarded to the respondents. Because the respondents' challenge presented evidence that they downloaded the flawed 8.0 version of the FECFile4 software and attempted to electronically file the report on October 15 before the flawed 8.0 version was removed from the website, the Reviewing Officer recommended that the Commission take no further action against the respondents with respect to 2 U.S.C. § 434(a).

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in the respondents' challenge or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The respondents' written response was received via facsimile on June 13, 2003 and is attached for your review.

OAR Recommendations

- (1) Take no further action in AF# 720 that Ron Daugherty for Congress and Scott Lykins, as Treasurer, violated 2 U.S.C. § 434(a) and close the file; and
- (2) Send the appropriate letter.

Attachment



SENSITIVE

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO Shawn Woodhead Werth
Reviewing Officer
Office of Administrative Review

FROM Office of the Commission Secretary

DATE: June 19, 2003

SUBJECT: Final Determination Recommendation in AF #720 – Ron Daugherty
For Congress and Scott Lykins, as Treasurer (C00371955).

The above-captioned document was circulated to the Commission
on **Monday, June 16, 2003.**

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	<u>XXX</u>
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Toner	—
Commissioner Weintraub	—

This matter will be placed on the meeting agenda for:

Monday, June 23, 2003. Please notify us who will represent your Division
before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Determination Recommendation)
in AF #720 - Ron Daugherty for)
Congress and Scott Lykins,)
as treasurer (C00371955))

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal
Election Commission executive session on June 23, 2003,
do hereby certify that the Commission decided by a vote of
6-0 to take the following actions with respect to AF #720:

1. Take no further action in AF #720 that
Ron Daugherty for Congress and Scott
Lykins, as treasurer, violated 2 U.S.C.
§ 434(a) and close the file; and
2. Send the appropriate letter, as
recommended in the Reviewing
Officer's memorandum dated
June 16, 2003.

Commissioners Mason, McDonald, Smith, Thomas, Toner,
and Weintraub voted affirmatively for the decision.

Attest:

June 23, 2003
Date

Darlene Harris
Darlene Harris
Deputy Secretary of
the Commission

THIS IS THE END OF ADMINISTRATIVE FINE CASE

720

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