



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**SENSITIVE**

MEMORANDUM

TO: Commissioners  
Staff Director  
General Counsel

FROM: Office of the Commission Secretary *MWD*

DATE: June 23, 2003

SUBJECT: Statement for the Record in ADR 105  
by Commissioner Thomas

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the ADR Officer will include this statement in the public record file in this case.

cc: Vincent Convery  
Allan Silberman

Attachment

0712 "520" 61 23 19 "025" 2170



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**SENSITIVE**

**Statement of Commissioner Scott E. Thomas for the Record in ADR 105**

I objected for the record in this matter only because the negotiated settlement suggests the Marquette County Democratic Party (MCDP) was required to register when the evidence in the file suggests otherwise. My discussions with the Office of Alternative Dispute Resolution (OADR) indicate there may have been some confusion on all sides as to the legal points involved.

The complaint listed nine transactions totaling \$3,088.64 that raised the possibility of "political committee" status. It included copies of the relevant state-level campaign finance reports filed by MCDP. All transactions except one were reported as "itemized independent expenditures" or "itemized in kind expenditures" with one of the following purposes or descriptions: "parade float," "assorted campaign buttons," "campaign signs," "buttons for campaign," "bumper stickers," "large 4 X 8 signs," "metal wires for campaign signs," or "campaign buttons." The remaining transaction for \$999.99 was reported as an "itemized direct expenditure" with the purpose being "contribution." A copy of the federal report filed by Stabenow for U.S. Senate showed this as a contribution receipt.

Under the statute, a local party committee becomes a "political committee" if in a calendar year it receives more than \$5,000 in "contributions," spends more than \$5,000 on 'exempt activities,' or spends more than \$1,000 in "contributions" or "expenditures." 2 U.S.C § 431(4)(C). An outlay by a local party is considered 'exempt activity,' and hence not a "contribution" or "expenditure," if it involves campaign materials such as pins, bumper stickers, posters, and yard signs used in conjunction with volunteer activities. 2 U.S.C. § 431(8)(B)(ix), (9)(B)(viii). This exemption applies even if the materials contain express advocacy of a named federal candidate or if there is coordination with the benefiting candidate.

The response of MCDP indicated the first eight transactions listed in the complaint were believed not to be "expenditures." MCDP further indicated "all materials were distributed by volunteers." As to the ninth transaction, MCDP characterized it as "a direct contribution."

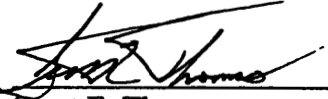
To me, the evidence suggests the likelihood that all transactions except the \$999.99 direct contribution to Stabenow for U.S. Senate would qualify as 'exempt activity.' That, in turn, would mean MCDP never crossed the "political committee" threshold and had no requirement to register.

13-19-025-2171

When the first version of the proposed Negotiated Settlement circulated for approval, my office communicated my concerns to OADR. Apparently, OADR understood that I believed the evidence showed MCDP *was* required to register as a "political committee." OADR then went back to MCDP and got agreement to revised language in paragraph 4: "MCDP acknowledged the *requirement to register* and subsequently did register with the Commission . . ." (emphasis added).

My only hope at this time is that MCDP, which may already know the law better than we think, has a pleasant experience at the FEC workshop it has agreed to attend. Whether it is required to register or not is still up in the air.

6/20/03  
Date

  
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Scott E. Thomas  
Commissioner